

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

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5 In the Matter of:

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7 CELSIUS NETWORK LLC,

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9 Debtor.

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12 United States Bankruptcy Court

13 One Bowling Green

14 New York, NY 10004

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16 October 2, 2023

17 2:13 PM

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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: JONATHAN

1 HEARING re HYBRID CONFIRMATION HEARING.

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3 HEARING re Hybrid Hearing RE: CEL token Settlement under
4 Bankruptcy Rule 9019, if applicable.

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6 HEARING re Hybrid Hearing RE: Debtor's Amended Motion for
7 Entry of an Order Authorizing the Debtors to Redact and File
8 Under Seal Certain Confidential Information (Doc## 3644,
9 3635)

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1 P R O C E E D I N G S

2 THE COURT: All right, please be seated. Good
3 afternoon, everyone. Mr. Koenig.

4 MR. KOENIG: Good afternoon, Your Honor. Deanna,
5 could you please make my colleague Jeremy Young a cohost for
6 sharing privileges?

7 CLERK: All right, Mr. Young is a cohost.

8 MR. KOENIG: Thank you so much. For the record,
9 Chris Koenig, Kirkland & Ellis, for Celsius. Your Honor, it
10 is such a pleasure to be here at the commencement of the
11 confirmation hearing. We're here seeking confirmation of
12 our modified Chapter 11 plan that's been overwhelmingly
13 accepted by our accountholders.

14 This plan is the culmination of over a year of
15 working collaboratively with all of our stakeholders from
16 the Committee, formal ad hoc groups, regulators, and other
17 governmental parties, as well as individual accountholders.
18 Simply put, it's time to confirm the plan so that we can get
19 out of bankruptcy and promptly make distributions to our
20 accountholders and other creditors.

21 Before getting into what's next, I want to take a
22 minute to walk through how we got here because context is so
23 important. We filed a presentation at Docket No. 3630.
24 Your Honor, do you have a copy of that presentation?

25 THE COURT: It's up on the screen.

1 MR. KOENIG: Okay. Wonderful. I'm going to start
2 on Slide 4. So these cases were filed in July of 2022.
3 Today, on the eve of confirmation that has such overwhelming
4 support, it's easy to forget just how challenging the early
5 stages of the case was. We filed for Chapter 11 in the
6 midst of an industry-wide crypto winter that depressed
7 prices across the board. The pause had happened just a
8 month prior to filing.

9 State and federal regulators and other
10 governmental agencies were actively investigating Celsius'
11 prepetition business model for, among other things, alleged
12 unregistered offerings of securities, money transmitter
13 license issues, and securities fraud. That's not the way
14 that anybody draws up the playbook for a Chapter 11 case.

15 So the early days of these cases continued to be
16 difficult and uncertain. U.S. Trustee filed a motion to
17 appoint an examiner. Regulators routinely appeared at
18 hearings and told Your Honor about their concerns with our
19 business model. Accountholders filed motions trying to
20 regain access to the cryptocurrency that they deposited on
21 Celsius platform. So what did Celsius do in light of all of
22 these challenges?

23 At the direction of our independent and newly
24 appointed special committee of the board of directors, we
25 decided that the only path forward was full engagement and

1 full transparency. We did not object to the appointment of
2 the examiner. Rather, we consented to her appointment and
3 we fully cooperated with her investigation. We provided
4 over 230,000 documents and she conducted 34 total interviews
5 with 26 current or former employees.

6 Around the same time, the special committee told
7 Mr. Mashinsky that he could either resign or be fired and he
8 resigned. We engaged with regulators and other governmental
9 agencies about their concerns regarding our business model.
10 We reached historic, consensual resolutions with each of
11 those regulators. None of the regulators are objecting to
12 the plan today, and that's because of those agreements.

13 I think that's truly remarkable, given where these
14 cases started. It seemed in the early hearings of the case,
15 there was a revolving door of regulators who wanted to make
16 sure Your Honor understood their frustrations about our lack
17 of engagement. We fixed that. We were so pleased to be
18 able to work with them to be able to fully resolve their
19 issues on the plan.

20 At Your Honor's suggestion early in the case, we
21 established email and phone lines where Celsius creditors
22 can easily write in and ask questions. We responded to well
23 over 1,000 emails to creditors during these cases. At some
24 point, we just stopped counting. Perhaps most importantly,
25 we decided to fully engage with the Committee, individual

1 creditors, and groups of creditors, to find consensus
2 wherever possible, even if it meant making very large
3 concessions in order to reach an agreement and drive the
4 cases forward.

5 The Committee is the natural statutory portal to
6 the Debtors. Their goal is to be a fiduciary for unsecured
7 creditors and to provide a check on the Debtor in
8 Possession. In most cases, the Committee is the Debtor's
9 principal adversary. At the beginning of these cases, it
10 certainly went that way. The Committee objected to many of
11 our initial motions, insisted on wide-ranging consent
12 rights, and the Committee also objected to our first
13 exclusivity motion.

14 What the early days of the case taught us was that
15 the only way to get out of bankruptcy was by truly building
16 consensus and working with all stakeholders and not fighting
17 over every last little thing. These cases are very
18 expensive and we certainly could have fought over every last
19 little thing and asked Your Honor to make rulings on every
20 legal issue, but that would've been costly, would've led to
21 delay, and also uncertainty in developing our transaction.

22 So building consensus meant that the Debtors had
23 to really embrace the Committee and the accountholders that
24 they represent and work together, and that meant making
25 significant concessions to the Committee. We agreed to a

1 very short first extension of exclusivity with the
2 Committee, even though we thought that the facts and
3 circumstances of these cases certainly warranted a much
4 longer one.

5 We agreed to wide-ranging consent rights for the
6 Committee on cash management, security stipulation, bidding
7 procedures, and other key orders. We truly invited the
8 Committee in and gave them co-equal consent rights over key
9 decisions in the case, from the decision to announce a
10 stalking horse to picking a winner of the auction and giving
11 them broad consent rights over all of the documents
12 underlying the plan.

13 Perhaps most importantly, we agreed to turn over
14 claims and causes of action to a litigation administrator
15 that would pursue that litigation post-emergence on behalf
16 of creditors. In many Chapter 11 cases, the Debtor and the
17 Committee fight over exactly that issue, who is going to
18 bring claims and causes of action of the estate, and Your
19 Honor may have -- you know, in other cases, may have had to
20 rule on the STN standard and whether it was the Debtors or
21 the Committee that would bring those cases.

22 That did not happen here. Earlier this year, we
23 entered into a stipulation with the Committee to put those
24 claims against former insiders aside and allow the
25 Committee's designee, a litigation administrator, to pursue

1 those claims for the benefit of accountholders. Simply put,
2 we could have fought about everything and instead, we made
3 the intentional and conscious decision to truly work with
4 the Committee and try to get out of bankruptcy.

5 These Committee members in particular have
6 dedicated an inordinate amount of their own personal time
7 and efforts to this case to try to get the best effort --
8 the best outcome for creditors. I know that there are folks
9 on social media who think it's very easy to second guess the
10 Committee members, but their dedication of their own time,
11 all of which is totally unpaid, and their fervent and honest
12 desire to get to the right answer for accountholders is
13 without question.

14 So I want to thank Mr. Colodny. I want to thank
15 his clients for being able to work so constructively with us
16 to get to this point. We simply wouldn't be here without
17 them and without being able to work so constructively with
18 them. Even though we often disagreed on key issues, we were
19 able to work together to get to resolutions that allowed us
20 to move these cases forward.

21 So, getting back to the timeline on the slide. So
22 the way that I think about these cases is really in two
23 stages. In the first stage, we needed to get the business
24 operating safely in bankruptcy, start cooperating with all
25 the different investigations, and get our new management

1 team in place with Mr. Ferraro as our new interim CEO. And
2 we had some key legal issues that we had to resolve before
3 we could work towards actually developing a transaction to
4 get out of bankruptcy.

5 We had to have the Earn trial in trial in December
6 to resolve the dispute over who owned the cryptocurrency in
7 the Earn accounts, the Debtors or the accountholders. Given
8 how many active pro se accountholders were arguing that the
9 crypto belonged to them, there was no alternative. We had
10 to have a judicial resolution. We could not have done it
11 consensually. And we litigated with Custody and Withhold
12 about their ownership rights as well.

13 Flipping to the next slide on the developments in
14 this calendar year, January and December were probably the
15 key turning point in the cases. We litigated Earn, Custody,
16 and Withhold. We obtained the Court's ruling on the Earn
17 dispute and we got the final examiner's report. All of
18 these items shed light on key issues and frankly set the
19 framework for the rest of the cases.

20 So that moved the cases into phase two and allowed
21 us to move forward and focus on developing a transaction
22 that would maximize the value of Celsius' business so that
23 we can get out of bankruptcy. And during stage two, we kept
24 resolving issues and building consensus wherever possible.

25 In the early portion of 2023 we reached

1 settlements with both the Custody and Withhold ad hoc groups
2 to resolve key questions about the applicability of
3 preferences and defenses for those accountholders. The
4 preference portion of that Custody and Withhold trial would
5 have been very interesting academically, but it would have
6 been expensive, risky, and would have delayed the
7 development of any transaction.

8 And so we've worked to pay out cryptocurrency to
9 those accountholders that participated in the settlements.
10 As Mr. Ferraro has regularly reported in his updates to the
11 Court, we've now distributed almost \$80 million in crypto to
12 folks that have participated in those settlements.
13 Critically, we reached a deal with Series B investors. This
14 was perhaps the most complex and challenging dispute of the
15 case.

16 Series B were seeking priority over all
17 accountholders. They said that they had the right to the
18 value of CNL and subsidiaries including mining and GK8.
19 After the Court ruled that the customers did not have
20 contractual claims against every legal entity, the Debtors
21 and the Committee advanced numerous alternative theories
22 from constructive fraudulent transfer to intercompany
23 claims, substantive consolidation, and even a class claim on
24 behalf of all accountholders.

25 Simply put, these cases would not -- we would not

1 we standing here today if we not -- had resolved that
2 litigation. We would still be fighting with the Series B
3 holders. Because of that settlement, we're able to take the
4 value of GK8 mining and CNL, and in our view, rightly
5 distribute the value of those legal entities to
6 accountholders and other creditors under the plan instead of
7 the Series B. Can we turn to Slide 11.

8 So these settlements cleared the way for us to
9 develop and pursue a value maximizing transaction. The
10 sales and marketing process was long and involved, but it
11 was wildly successful. We started in March and we named
12 NovaWulf as a stalking horse bidder. That transaction
13 wasn't perfect, but it was a good starting point and it
14 generated real competitive tension among other bidders.

15 We got numerous additional bids. We named two
16 additional qualified bidders and we had a month long
17 auction. The auction lasted longer than any of us would
18 have liked, but it was wildly successful, as I said. We
19 generated hundreds of millions of dollars of additional
20 value for the transaction through the competitive tension of
21 the auction process and through lower fees and extra
22 contributions by Fahrenheit to the transaction.

23 And the particularly unique part of Celsius'
24 business is that we have not only liquid cryptocurrency but
25 real illiquid assets, too, most notably the mining business.

1 Celsius' mining business is already one of the largest in
2 the country and we also have other illiquid assets too. We
3 have causes of action relating to historic relationships and
4 investments in a variety of other cryptocurrency businesses.

5 So maximizing value means not only distributing
6 the liquid cryptocurrency that we have, but ensuring that
7 accountholders can realize the full value of the illiquid
8 assets as well, the mining business in particular. Selling
9 the mining grades for the scrap that they are outside of the
10 mining company would be particularly value destructive.

11 So what we were focused on in phase two and stage
12 two of the cases was we wanted to find an excellent partner
13 with a proven track record in crypto and finance generally.
14 We found that partner in Fahrenheit who has demonstrated
15 experience in key areas of managing cryptocurrency, Bitcoin
16 mining, staking, and risk management generally. More
17 specifically U.S. Bitcoin is already one of the largest and
18 most successful Bitcoin mining operators in the country.
19 They will run Newco's mining operations.

20 Proof Group will lead Newco's staking efforts and
21 contribute intellectual property with respect to staking and
22 assist Newco in developing its own staking business. And
23 Fahrenheit is going to work to list the equity of Newco on
24 NASDAQ to provide creditors with the maximum liquidity
25 possible for the stock.

1 So we're very excited about Fahrenheit and what
2 they have to offer. We believe that they will maximize the
3 value of Newco for the benefit of the accountholders. And
4 Fahrenheit believes in the business. They have agreed to
5 invest up to \$50 million of their own money in the business,
6 right alongside accountholders. They are putting their
7 money where their mouth is.

8 So after we announced the Fahrenheit transaction
9 in late May, we worked to build additional consensus. In
10 mid-July, we met with the Earn and Borrow ad hoc groups for
11 three days in mediation before Judge Wiles. We reached an
12 agreement on the terms of amendments to the plan that would
13 gain the approval of those ad hoc groups and resolve the
14 intercreditor disputes between Earn and Borrow.

15 Once that was completed, that meant that we had
16 agreements with each ad hoc group for each of the Debtors'
17 programs: Earn, Custody, Borrow, and Withhold. And before
18 turning to the objections, I just really briefly want to
19 talk about the orderly winddown. Experience in these cases,
20 has taught us that it's important to have a backup plan. We
21 believe that the Newco plan is executable and we maximize
22 value, but we don't know exactly what the future holds.

23 We hope to be able to get out of bankruptcy by the
24 end of this year, but we thought it prudent to set up a
25 backup plan so that if we have to pivot for any reason, we

1 are ready to do so.

2 So, with that very long winded opening, that
3 brings us to today. I'm not going to go through all of
4 these slides. I don't want to go through all these slides,
5 but can we do Slide 15?

6 So these are folks that filed formal and informal
7 objections. Looked at the list of the parties that are
8 going to speak this afternoon and what's notable is how many
9 are speaking in support of the plan, and in looking at some
10 of the names, a couple of months ago, you might have thought
11 that they would have been on the other side of the ledger.

12 So we're pleased to have driven so much consensus.
13 But turning to the objectors, as we set forth in our brief,
14 we think we've resolved nearly all of the objections that
15 have been filed. We made adjustments and clarifications to
16 the release and exculpation provisions to incorporate all
17 the comments that we received from the U.S. Trustee.

18 We are now resolved with the SEC and the state
19 regulators and we also resolved many of the reservations of
20 rights and other limited objections that were filed through
21 agreed language in the modified plan or in the confirmation
22 order. So only a few objections remain. This is just an
23 opening, but I'll just briefly walk through a couple of the
24 key ones now.

25 First, there were a number of borrowers that filed

1 letters -- retail borrowers who objected to the plan on the
2 basis that they believe their plan treatment is
3 inappropriate. They are arguing that they own the
4 cryptocurrency that was deposited to support their loan.
5 But the Borrow terms of use are very clear on this issue,
6 just as the Earn terms of use were. Celsius holds legal
7 title to those cryptocurrency assets and we can use,
8 dispose, or hypothecate those assets as Celsius sees fit.
9 The borrowers don't own the collateral, we do.

10 They are unsecured creditors. What the borrowers
11 do have is a right of setoff because they have claims
12 against Celsius for the return of the cryptocurrency they
13 deposited and Celsius has a claim against them for the
14 repayment of the loan principal. And that's exactly how the
15 Chapter 11 plan is structured. Borrowers have a right of
16 setoff.

17 And notably, this treatment was accepted by
18 borrowers in over 96 percent in dollar amount and 98 percent
19 in number. And they also have some additional rights that
20 they achieve through the mediated settlement that we reached
21 with the Borrower Ad Hoc Group. Most importantly, they have
22 the option to repay the principal balance of their loan.
23 They will receive a like amount of cryptocurrency back in
24 the amount of the principal balance.

25 Now, why that's important, Your Honor, is tax

1 reasons, frankly. If they have a low basis in the
2 cryptocurrency they deposited, receiving a like amount back
3 is a much better tax outcome for them than if they were to
4 have those claims set off. It might be otherwise
5 economically the same, but obviously, if we can structure a
6 transaction to save taxes for our accountholders, we're
7 happy to do so.

8 We also agreed to work constructively with
9 borrowers who want to take advantage of this option but
10 might need financing. So to the extent they identify a
11 third party lender who would come in and give them financing
12 to make this principal repayment, we will cooperate to the
13 extent we can and with the lender to make sure that this
14 transaction can go through.

15 So this is all consistent with the borrower's
16 legal rights under the borrower terms of use, which means
17 that the best interest test is satisfied with respect to
18 them. For that reason, these objections by these retail
19 borrowers should be overruled.

20 Pharos objected on two discrete issues, the
21 absolute priority rule and the best interest test. On the
22 absolute priority rule, they complained the Series B holders
23 who are equity holders are receiving a distribution under
24 the plan when creditors are not being paid in full. To be
25 clear, the Series B holders -- this is only those that did

1 not affirmatively participate in settlement that Your Honor
2 ordered earlier this year. This is just for them to receive
3 their pro rata share of the million dollars that you
4 approved.

5 Pharos says that this violates absolute priority,
6 but this Court approved settlement resolved an issue of
7 priority, too. The Series B holders argued that they were
8 ahead of creditors and the whole reason we entered into the
9 settlement was to resolve this very important issue.

10 And notably, I think Your Honor has dealt with
11 this issue at least adjacently in the Dewey and LeBoeuf
12 case. In that case, there was a settlement that was entered
13 into among the partners and some objecting party said that
14 it was a sub rosa plan and it violated absolute priority.

15 And there, you found that you can -- that a
16 absolute priority can be diverged from if there is a good
17 reason to do so. And here we think that there's a very good
18 reason to do so. It resolved another priority dispute. And
19 had we not done so, the Series B may have been entitled to
20 up to \$600 million of assets.

21 Second, they raised the best interest test. They
22 argue that the liquidation analysis to be presented doesn't
23 demonstrate that holders of general unsecured claims like
24 them are receiving under the plan as much as they would in a
25 Chapter 7 liquidation. But as part of making an argument,

1 they argue that Newco is actually completely valueless, even
2 though it's being seeded with \$450 million of liquid
3 currency, Newco will run and operate a mining business where
4 the Debtors submitted a valuation that has a midpoint value
5 of \$565 million and other liquid assets that a separate
6 valuation report valued in the hundreds of millions of
7 dollars.

8 Their objection says that we've submitted no
9 evidence, but actually, there's over \$1.2 billion of assets
10 that Newco is going to be seeded with and we've submitted
11 two separate expert reports to prove that point and we will
12 certainly submit them for cross examination this week to
13 prove the point in Court.

14 Moving on to the next point. A few individuals
15 objected to the emergence incentive plan that is embedded in
16 our chapter 11 plan. I want to acknowledge, I know that
17 executive compensation is understandably a hot button issue
18 for accountholders who were defrauded. They just want to
19 get out of bankruptcy. We do, too. But this management
20 team was not the ones that defrauded the accountholders.
21 That management team is gone. Those former insiders are
22 gone.

23 We're under new management who has been working
24 around the clock to make sure that our systems are ready to
25 make distributions of over \$2 billion of cryptocurrency

1 that's required negotiating agreements with Coinbase and
2 PayPal, coordinating with them to make sure that all the
3 distributions can go off without a hitch and preparing for
4 Celsius' own distributions of custody under the plan.
5 Celsius and the distribution agents need to make over
6 400,000 distributions of liquid cryptocurrency on the
7 effective date.

8 Accountholders will want that to be done in a very
9 short period of time, and it's only thanks to the continued
10 efforts of the company's management team that this will even
11 be possible. So as an initial matter, the plan included
12 this incentive plan as part of its terms. The plan was
13 voted on. The classes of accountholders who objected to
14 this term voted to accept the plan. It is binding on the
15 rest of the class so long as it meets best interests, which
16 it does.

17 This is a payment of up to \$2.6 million. The
18 difference between a Chapter 7 liquidation and the plan is
19 well over 100 times that amount and the payment isn't going
20 to be made by the Debtors, either. It's going to be made by
21 the post effective date Debtors and only after the plan
22 administrator verifies that the metrics have been met. That
23 was a change that we made at the suggestion of the U.S.
24 Trustee to help resolve their issues with the emergence
25 incentive plan.

1 So we think the requirements of the Bankruptcy
2 Code for payment of executive bonuses don't even apply for
3 these reasons. But even if they apply, the evidence will
4 demonstrate that EIP easily meets those requirements. The
5 evidence will show the management team is paid well under
6 market and in fact will continue to be paid under market
7 even after the EIP is paid.

8 And the management team's contributions are far in
9 excess of their typical job duties. Frankly, we could not
10 be here without the efforts of these executives and we need
11 to make sure that we properly incentivize them so we can
12 maximize value and promptly return cryptocurrency to
13 creditors.

14 The only other significant objections on this list
15 are largely on CEL token. I believe that Mr. Colodny will
16 be covering that. It's the Committee's expert on the
17 valuation of CEL token that is really at the heart of this
18 issue. There are a few other objections that were covered
19 in the Committee's brief but not the Debtors' brief so I'll
20 defer to Mr. Colodny there as well. This is just an opening
21 statement. We filed a 150-page brief which not sure if Your
22 Honor has fully read yet.

23 THE COURT: I have now.

24 MR. KOENIG: So --

25 THE COURT: We had a hearing last week. I hadn't

1 been all the way through it, but I have now.

2 MR. KOENIG: So the brief walkthrough is required
3 in some more detail. I'm not going to belabor the point. I
4 know we have a lot of folks to speak. So unless Your Honor
5 has any questions for me, I'll conclude my remarks by saying
6 we're excited to present our case to confirm the plan.
7 We're going to work to get out of bankruptcy and make
8 distributions to our accountholders. I'll cede the lectern
9 to my colleague, Elizabeth Jones, who's going to be
10 presenting on the voting results and going to be outlining
11 the witnesses that you're going to hear from this week.

12 THE COURT: Thank you.

13 MR. KOENIG: Thank you.

14 THE COURT: Ms. Jones?

15 MS. JONES: Good afternoon, Your Honor. Elizabeth
16 Jones of Kirkland & Ellis on behalf of the Debtors. If we
17 could start now on Slide 26, which walks through the voting
18 results. The next two slides, Your Honor, demonstrate the
19 voting results that we filed in Mr. Brian Karpuk's
20 declaration at Docket No. 3560 then was subsequently amended
21 at Docket No. 3574.

22 Your Honor, as demonstrated in the voting results,
23 the plan has been overwhelmingly accepted by accountholders
24 in both number and amount. Classes 2, 4, 5, 6A, 7, 10, and
25 14 out of our 17 classes voted to accept and while Classes 8

1 and 9 may have voted to reject the plan and we have a few
2 other deemed to reject, as my colleague, Mr. Koenig noted,
3 we can and do think that the plan should be confirmed as we
4 set forth in our papers.

5 Your Honor, if I may --

6 THE COURT: There's no one junior to those
7 rejecting classes that are receiving anything under the
8 plan?

9 MS. JONES: Not on behalf of their status as an
10 interest holder, but on behalf of the settlement in Series
11 B.

12 Your Honor, if I may also provide just a few other
13 statistics to demonstrate how successful this solicitation
14 process was. The Debtors distributed approximately 380,000
15 ballots and received approximately 80,000 in return, giving
16 us a little bit more than a 20 percent return rate. In
17 comparison to two of the recently filed crypto cases, in
18 Voyager, they had about a 5 to 6 percent return rate and in
19 BlockFi, they had approximately a 10 percent return rate.
20 Both of those had ballots returned anywhere between 35 and
21 65 thousand ballots.

22 Your Honor, what's even more impressive here is
23 that out of those 80,000 ballots that were returned, we had
24 \$3 billion worth of those claims out of approximately \$5
25 billion in claims; \$2.55 billion of that came from holders

1 in our Earn class.

2 So Your Honor, what that demonstrates here is that
3 there has been a lot of participation. We know the ballot
4 was complicated. It was not an easy check box and yet we
5 were very, very fortunate that we had 80,000 individuals
6 willing to walk through that and demonstrate their support
7 for the plan.

8 In addition, Your Honor, and a few other important
9 statistics, we had roughly only 515 parties opt out of the
10 third-party releases and we have only a little bit over
11 1,700 individuals opt out of the class claim settlement. We
12 had 30,000 proofs of claim filed, so to have only 1,700 of
13 them opt out and elect to continue pursuing that is a huge
14 success from our view.

15 So Your Honor, we would just like to conclude our
16 opening by introducing the witnesses that we will hear from
17 over the next few days in addition to Mr. Karpuk from
18 Stretto. So Your Honor, we have also filed declarations on
19 behalf of six other witnesses.

20 First, we'll have Mr. Christopher Ferraro, whose
21 declaration was filed at Docket No. 3581. He is the
22 Debtors' interim chief executive officer, the Debtors' chief
23 financial officer, and the Debtors' chief restructuring
24 officer. He will be providing evidence in support of
25 certain of the 1129 factors as well as a number of other

1 items that we address through our brief.

2 Your Honor, we will also hear from Mr. Robert
3 Compagna, who is a managing director at Alvarez & Marsal.
4 His declaration was filed today -- or was filed last week at
5 Docket No. 3582 and a supplemental declaration was filed
6 shortly before this hearing at Docket No. 3653. He will
7 also provide evidence in support of certain of the 1129
8 factors as well as the best interest test.

9 Next, Your Honor, we have Mr. Ryan Kielty, who's a
10 partner of Centerview Partners LLC. His declaration was
11 filed at Docket No. 3592. He will provide evidence in
12 support of the mining valuation. You could turn to slide --
13 perfect, than, you, 29.

14 Next, Your Honor, we have Mr. Steven Kokinos,
15 whose declaration was filed at Docket No. 3591. He is the
16 proposed chief executive officer of Newco and a member of
17 the Fahrenheit Group who was our plan -- and is our plan
18 sponsor. He will provide evidence in support of the
19 proposed Fahrenheit go forward business plan.

20 Next, Your Honor, we have Ms. Allison Hoeinghaus
21 who has filed a declaration at Docket No. 3586. She is also
22 a managing director at Alvarez & Marsal and she will provide
23 evidence in support of the Debtors' emerge incentive plan.

24 Finally, Your Honor, we have Mr. Joel Cohen who
25 filed a declaration at Docket No. 3588. He is a managing

1 director at Stout Risius Ross LLC and he will provide
2 evidence in support of the Debtors' valuation of certain
3 liquid and illiquid assets.

4 So Your Honor, as my colleague, Mr. Koenig noted,
5 we filed a large brief in support of our argument and we
6 will hear from the witnesses in the next few days on the
7 factual basis as to why we think the plan can and should be
8 confirmed.

9 We're here today as a result of a lot of hard work
10 and consensus building in the last 14, 15 months and we
11 stand here ready today both to prove our case in chief,
12 confirm the Chapter 11 plan, and hopefully conclude these
13 chapter 11 cases.

14 THE COURT: Thank you very much. Mr. Colodny.

15 MR. COLODNY: Good afternoon, Your Honor. Aaron
16 Colodny from White & Case on behalf of the Official
17 Committee of Unsecured Creditors. Could my colleague Mr.
18 Dowdy be made a cohost to share our presentation?

19 CLERK: Yes, just give me one moment, please.

20 MR. COLODNY: Thank you. While you're doing that,
21 Your Honor, I know I always am batting second to Mr. Koenig
22 here. We come at this from a slightly different
23 perspective, and so while I may repeat some of the things he
24 said, I made an effort to keep my opening remarks shorter
25 for Your Honor.

1 THE COURT: They didn't use their full allotted
2 time.

3 MR. COLODNY: To ensure I don't go over, I think
4 I'll start while they do that.

5 THE COURT: That's fine, go ahead.

6 CLERK: It's -- he's a cohost. He's been a cohost
7 for a little bit.

8 MR. COLODNY: Yeah, I see it. It's just I think
9 he's working on trying to get it to a presentation slide
10 instead of the PowerPoint people.

11 THE COURT: No problem.

12 MR. COLODNY: I'll go a cappella, I guess.

13 THE COURT: Give it another minute. I think if
14 you click from the beginning in the upper ribbon, you'll get
15 there. Go ahead.

16 MR. COLODNY: All right. On June 12th, 2022,
17 Celsius paused withdrawals to stop a run on the bank.
18 Before the pause, as will be shown in the next slide,
19 Celsius and executives repeatedly assured accountholders and
20 the public that everything was fine and all their funds were
21 safe. On the date of the pause, everyone knew that they
22 were not. For a month, Celsius was silent and rumors
23 flowed. Then on July 13th, 2022, we filed Chapter 11 cases
24 before this Court with no plan for how these cases would
25 proceed.

1 The first day declaration painted a picture of a
2 company that was crippled by the crypto winter and had
3 invested with the wrong people. At that time, Mr. Mashinsky
4 testified that the company had a \$1.2 billion deficit. The
5 Committee was appointed on July 27th and was tasked with
6 representing the interests of the Debtors' largest
7 constituency, the company's unsecured creditors including
8 nearly 600,000 retail holders who held the majority of the
9 claims against the Debtors.

10 Those accountholders were dispersed all over the
11 world and were without access to their funds. Shortly
12 thereafter, it became clear that what was testified to in
13 the first day declaration was not the entire story.

14 Rather, information published by the Debtors and
15 investigations conducted by the Committee and independent
16 examiner uncovered a company rife with issues including a
17 hole in the balance sheet that began in March '21, the
18 company's repeated misrepresentations of business practices,
19 an orchestrated corporate cover up of those
20 misrepresentations, and the company's manipulation of the
21 CEL token.

22 And while Mr. Mashinsky and Mr. Leon were telling
23 acountholders that all funds are safe and damn the
24 torpedoes, full speed ahead, they were secretly withdrawing
25 tens of millions of dollars from the platform. That is

1 where we started, with a heavy cloud over these estates,
2 accountholders who had been deceived into entrusting their
3 hard earned assets with Celsius and a platform that was shut
4 down so that the few who were quick to withdraw would not
5 further dissipate the remaining assets to the detriment of
6 those who did not ask.

7 Upon learning all of that information, we acted
8 quickly and firmly to ensure that the bad actors were
9 removed from positions of power that they occupied with
10 control over accountholder assets. Today, we are before
11 Your Honor with a plan that if confirmed and consummated
12 will distribute nearly \$2 billion of Bitcoin and Ethereum
13 and stock in a new company to the Debtors' creditors.

14 The new equity will maximize the value of the
15 Debtors' other assets and provide creditors with the ability
16 to monetize those assets when they would like. Importantly,
17 the plan also preserves claims against Mr. Mashinsky, Mr.
18 Leon, and others related to that wrongdoing to be prosecuted
19 after the bankruptcy case is concluded.

20 The plan includes explicit carveouts to the
21 typical Chapter 11 releases or excluded parties which
22 include all former employees, equity holders, contract
23 counter parties, promoters, advertisers of Celsius that are
24 not specifically identified as released parties.

25 Now to touch on the plan process a bit and move to

1 where we're going with this trial. Since the beginning of
2 these cases, our Committee has had one goal, to return as
3 much value to creditors as soon as we could responsibly do
4 so. The process has taken longer than we would like, but we
5 stand on the precipice of confirming the first
6 reorganization of a major cryptocurrency company.

7 And as Mr. Koenig explained, the path to get here
8 was not easy or rarely a straight line. There were
9 significant and novel legal issues that needed to be
10 resolved to fairly distribute the Debtors' assets. We
11 methodically navigated those issues before this Court, each
12 time putting accountholders as a whole first, building
13 consensus, and creating a foundation for the plan that's
14 before Your Honor today.

15 We methodically navigated -- while those issues
16 were being determined, the Committee did not stand in place.
17 Rather, we pushed the Debtors and worked cooperatively with
18 them to reorganize and rehabilitate their mining business.
19 That was not an easy task. The mining business was in
20 disarray upon the filing and after the filing suffered
21 significant setbacks due to the financial issues of many of
22 its major counterparts.

23 As you will hear from Mr. Kielty of Centerview
24 Partners, the Debtors and the Committee ran a competitive
25 sales and auction process that took advantage of a rebound

1 in the crypto market and renewed interest in sponsoring the
2 plan of reorganization for the Debtors. Through the
3 auction, we were able to leverage that competitive tension
4 to bring multiple bidders to the table and drive the best
5 deal possible for creditors including the distribution of a
6 significant amount more liquid cryptocurrency than was in
7 the stocking horse bid.

8 The Debtors for their part understood that
9 creditors would own substantially all of any reorganized
10 business. And as a part of that auction process, they
11 worked cooperatively with our clients to identify the
12 highest and best -- highest bid and best management team to
13 run the new company. Given the history of Celsius, it was
14 of paramount importance to our clients that Newco be placed
15 in trusted hands and our clients spent many days with each
16 bidder to make the right choice for who would sponsor that
17 plan.

18 At the end of the auction, the Committee members,
19 as they've done throughout this case, acted unanimously to
20 select the Fahrenheit Group as the winning bidder.

21 Fahrenheit is a group of seasoned professionals with
22 experience in the cryptocurrency industry. They also have
23 experience building technology companies and managing risk
24 at large financial institutions. And as you will hear from
25 Mr. Kokinos, the proposed CEO of Newco, each of the members

1 of Fahrenheit will be making a significant financial
2 investment in a new company which has yet to be named.

3 Fahrenheit will stand alongside accountholders
4 with aligned incentives to increase the equity value of
5 Newco for the benefit of everyone. Now, this new company
6 will be a first of its kind business. It will have
7 significant operations concerning two major
8 cryptocurrencies, a Bitcoin mining company, and it will also
9 stake the company's own ethereum. I want to touch on three
10 points that guided the Committee's approach to constructing
11 this new company. First, compliance with applicable
12 regulations.

13 We worked to color inside the lines and consult
14 with the regulators to create a compliant entity out of the
15 gates. We were presented with many unique ideas for how to
16 reorganize and restructure the claims against the Debtors.
17 In many instances, we opted to take the conservative
18 approach to ensure that we could exit bankruptcy. That was
19 of paramount importance to my clients.

20 Bankruptcy provides the Debtors with a fresh start
21 upon emergence. And here, that fresh start is a competitive
22 advantage for the new company that we were unwilling to
23 compromise. We also understood that to emerge on our
24 timeline, we had to work with regulators to ensure that they
25 were comfortable that accountholders were protected on the

1 other side of these Chapter 11 cases. As Mr. Koenig
2 mentioned, we've been in constructive dialogue with the
3 regulators which were led by the Debtors throughout this
4 process and the lack of any objection from regulators is a
5 reflection and validation of that approach. It's also
6 something that differentiates these cases from any other
7 Chapter 11 case concerning a cryptocurrency company.

8 Second, we wanted to provide creditors with
9 liquidity. We understand that creditors did not sign up to
10 own equity and many creditors need access to their
11 investments. However, many of the investments that Celsius'
12 prepetition management made are illiquid and selling them
13 now would have resulted in a steep discount. Putting those
14 assets in a liquidating trust would also not maximize their
15 value, as those instruments typically trade for pennies on
16 the dollar.

17 The plan currently contemplates that those
18 illiquid assets will be transferred to Newco whose equity is
19 anticipated to be listed on NASDAQ. That unique opportunity
20 is only presented through Section 1145 exemption under the
21 Bankruptcy Code. And as we flagged in our brief, there are
22 still regulatory approvals that need to be received for that
23 equity to be listed; however, those regulatory approvals
24 will not hold up confirmation.

25 THE COURT: Is there an estimate of the timeline

1 to get the securities registered?

2 MR. COLODNY: My understanding, Your Honor, is we
3 are waiting on the SEC audit function to approve a
4 preclearance letter. Once that preclearance letter is
5 approved, we'll then submit the Form 10 and there's a 60 day
6 waiting period, then, while the SEC reviews that Form 10.
7 But I want to flag, Your Honor, that it is customary for
8 confirmation orders to be entered with a condition precedent
9 to the plan being the receipt of regulatory approvals.

10 And if those necessary regulatory approvals are
11 not obtained, the plan provides for the mechanism to toggle
12 to the plan B. We believe the plan B will result in lower
13 recoveries, but it will allow the Debtors to proceed with
14 distributing assets to creditors, which is --

15 THE COURT: Is there an estimate on the time for
16 regulatory approval?

17 MR. COLODNY: Of the --

18 THE COURT: When?

19 MR. COLODNY: I think we're confident it will
20 occur by the end of the year, but I don't know that we've
21 received a set estimate from the SEC at this time.

22 THE COURT: Okay.

23 MR. COLODNY: Third, we want to ensure that Newco
24 will be transparent and overseen by a competent and
25 accountable board of directors. Before I proceed, Your

1 Honor, I don't want to make any promises that we are going
2 to receive regulatory approval or emerge by the end of the
3 year. I think the answer, to be candid, it's unclear and
4 it's dependent on whether the SEC will grant our
5 preclearance letter.

6 THE COURT: I wasn't looking for promises.

7 MR. COLODNY: So our third pillar, when we were
8 thinking about this new company, is we wanted to ensure that
9 Newco was transparent and overseen by a competent and
10 accountable board of directors. Newco will be a public
11 reporting entity that will file 10Ks, 10Qs, and 8Ks of major
12 events.

13 It will be overseen by a qualified board of
14 directors, a majority of which were selected by the
15 Committee through an intensive interview process and Your
16 Honor will hear from our committee member, Major Mark
17 Robinson, regarding the board selection process and why our
18 clients believe that they have selected the best set of
19 experienced directors to oversee this new company.

20 We also heard from our constituency who wanted to
21 ensure that creditors had oversight of that board, and we
22 worked with the Earn group who identified three significant
23 prepetition creditors to act as board overseers. Now, five
24 prepetition creditors with a significant stake in Newco will
25 have a seat at the table and that board will ensure that

1 Newco is operated for the benefit of its shareholders who
2 will initially be creditors.

3 There were lots of debates throughout the auction
4 in these cases about how best to reorganize the Debtors'
5 assets, how to reorganize a cryptocurrency company is not
6 something you can look up in a cookbook, and we went through
7 an intensive process which has been detailed in the record
8 and will be detailed by Mr. Kielty to select the option that
9 the Committee believes and the Debtors believe is the best
10 path forward.

11 We heard loud and clear throughout these cases
12 that creditors were not interested in receiving fiat
13 currency through a liquidation under Chapter 7, and as will
14 be demonstrated by the Debtors' witnesses, the recoveries
15 provided to creditors through the plan far exceed the
16 recoveries that would be provided if the Chapter 7 Trustee
17 was appointed and liquidated the Debtors' cryptocurrency,
18 mining rigs, and illiquid assets. And quite frankly, it's
19 not close.

20 The culmination of this entire process is an
21 overwhelming vote in favor of the plan. With over 87,000
22 accountholders voting to accept in the amount of \$2.8
23 billion which far surpasses anyone's wildest expectations,
24 and given where these cases started and the long strange
25 trip it's taken to get here, I think we all can say these

1 results are a vindication of all the hard work.

2 Now, Mr. Koenig has addressed many of the
3 objections and I want to spend the rest of my time speaking
4 about the proposed treatment of CEL token under the plan.
5 One of the questions before the Court is, what is the CEL
6 token. The evidence will show that CEL token is a fungible
7 digital representation of ownership of a unit that was
8 issued by the Debtors. Mr. Ferraro will explain how holders
9 of CEL token could use those tokens to pay the company
10 interest on retail loans at a discounted rate.

11 Accountholders could elect to earn and sell and
12 receive a higher rewards rate on their deposits than if they
13 if they elected to receive in the cryptocurrency the
14 deposited. And CEL token functioned as a type of airline
15 loyalty miles, where people that held a certain amount of
16 CEL token could get access to lower rates or products that
17 the company was offering.

18 Mr. Ferraro will also testify that after the
19 pause, none of those uses continued to exist. To be clear,
20 Celsius has no obligation at any time to redeem CEL tokens
21 or make any payment of cash on account of CEL token. Its
22 only obligation is to return the CEL token to accountholders
23 when requested, if they have accounts in the Earn program.

24 Mr. Ferraro will also testify that Celsius
25 advertised in investor presentations and directly to the

1 public that the value of the CEL token represented the
2 success of Celsius. Mr. Mashinsky regularly touted the
3 value of the CEL token on his public videos and how the
4 efforts of the Celsius team to grow the business would cause
5 the CEL token to increase and used the circular flywheel
6 model to demonstrate this.

7 Put simply, CEL token was an equity or equity-like
8 security whose value rose and fell based on the efforts of
9 Celsius and Celsius' ability to go -- continue as a going
10 concern. Now, what CEL token is, determines how it should
11 be treated under the Bankruptcy Code. If CEL token is an
12 equity or equity-like security, it would come after all
13 unsecured claims. Moreover, if CEL token is determined to
14 be a security, as we have argued in our pleadings, claims
15 arising on account of the purchase or sale of the CEL token
16 would be subordinated and would only recover after all
17 claims are paid in full.

18 However, because the treatment of digital assets
19 under the Bankruptcy Code is a new issue, it is the
20 Committee's position that denying any recovery to CEL token
21 holders who were lied to the same as all other
22 accountholders, would be inequitable. I want to pause and
23 point out that all eligible accountholders could have
24 elected to earn in CEL token, and those that did so
25 knowingly took a greater risk tied to the success of Celsius

1 than those who elected to earn in kind in the cryptocurrency
2 that they transferred to Celsius.

3 For example, those that elected to receive
4 interest in Bitcoin elected to receive a token that had a
5 value independent of Celsius. Those that deposited Bitcoin
6 and elected to receive in CEL, elected for this riskier
7 option which had the potential for a higher return both in
8 terms of the growth of the token and the amount that they
9 received as interest.

10 But Celsius has now failed, and because there are
11 not enough assets to satisfy all claims, providing value to
12 one set of creditors decreases the amount recoveries for all
13 other creditors. The Committee attempted to navigate this
14 delicate balance by offering a 25 cent settlement as value
15 of CEL token under the plan. That settlement was proposed
16 through the plan and after a lot of development, the plan
17 was clear that a vote to accept the plan was a vote to
18 accept that settlement and the settlement was accepted by an
19 overwhelming amount.

20 Those voting results are a testament to the
21 reasonableness of the settlement. Now at the last hearing,
22 Your Honor noted that the treatment for dissenting CEL token
23 holders cannot be imposed on those dissenting creditors
24 unless the Debtors demonstrate that the treatment meets the
25 best interests of creditors test.

1 In other words, the Debtors must show by a
2 preponderance of the evidence that the CEL token holders
3 receive more under this plan than they would receive in a
4 Chapter 7 liquidation. Here, that test can mean that in
5 three ways. As we discussed before, first, the Court could
6 find that the CEL token was the equivalent of equity or
7 should be recharacterized as equity.

8 THE COURT: Let me just stop you there for a
9 minute. In the SEC's complaint against Mashinsky and
10 Celsius, the complaint takes the position that the Earn
11 accounts under the Howey Test were securities.

12 MR. COLODNY: Correct.

13 THE COURT: If the Earn accounts were securities
14 and the CEL token was a security, wouldn't they both be
15 subordinated and essentially be in the same class for
16 distribution?

17 MR. COLODNY: I don't agree with that, Your Honor.

18 THE COURT: Okay, tell me why.

19 MR. COLODNY: Because the Earn accounts are the
20 akin to a debt obligation. Celsius has a payment obligation
21 under an Earn account to return the assets to
22 accountholders. In every Chapter 11 case, there are
23 unsecured notes. Unsecured notes is the first item listed
24 in the definition of security under the Bankruptcy Code, and
25 payment obligations on behalf of unsecured notes are never

1 subordinated. Damage claims arising from those unsecured
2 notes may be, but the payment obligations are not.

3 When I think about the CEL token, it's a security
4 inside of that security and because it's an equity interest
5 with no payment obligation on behalf of the Debtors, it
6 should be treated differently than the Earn accounts. I
7 know it's a fine distinction, but I think it's one that's
8 incredibly important and it is one that is -- happens in
9 bankruptcy cases all the time. I've dealt with bankruptcy
10 cases with \$2.7 billion worth of payment obligations on
11 unsecured notes and it's never mentioned that those payment
12 obligations will be subordinated.

13 So I think where I was when I left off were the
14 three reasons how it can meet the best interest test. The
15 first, as I talked about, was if it was recharacterized.
16 The second is 510(b) as you mentioned. In both cases, the
17 plan could be confirmed if the Court makes either finding if
18 it provided no value to CEL token holders. However, Your
19 Honor doesn't need to reach those points.

20 As Mr. Compagna will testify, you only need to
21 find by a preponderance of the evidence that the value of
22 the CEL token on the petition date was less than 34 cents to
23 determine that the best interest test is met. And here,
24 that's clearly the case.

25 THE COURT: The 34 cents because of what?

1 MR. COLODNY: Thirty-four cents because if you
2 look at 34 cents times the 47 percent recovery analysis and
3 look at the 25 cent proposed recovery times the 65 percent -
4 - 67 percent reorganization, the 67 percent reorganization
5 on the 25 cent recovery is greater than 47 on the 34
6 percent. Sorry.

7 Now, if you consider the CEL token in terms of its
8 value being tied to Celsius and consider that Celsius by its
9 own admission was wildly insolvent as of the petition date
10 and that the Celsius platform was shut down and there was no
11 longer a use for the CEL token, the value on the CEL token
12 has to be zero or something close to it. Mr. Galka, our
13 expert, is going to tell you that determining the specific
14 value of the CEL token at a point in time is not easy
15 endeavor for a number of reasons.

16 First, it lacks any underlying cash flows or
17 financial metrics that would support its value in a manner
18 that's traditionally applied to valuation. The market price
19 of CEL token could be an indicator of the value; however, as
20 the evidence will show the market price, here was never an
21 accurate indication of its value as it was significantly
22 affected by Celsius' covert purchases of the token prior to
23 the petition date.

24 Celsius advertised that it was purchasing the
25 amount of CEL token it needed to pay customer rewards. That

1 was a business model. It's one of the critical elements of
2 why CEL token should be a security. The evidence will show
3 that what Celsius did not tell the public or even many of
4 its employees was that it was purchasing far more than
5 required to pay rewards to inflate the price and create the
6 perception of success for its flailing enterprise.

7 Celsius has admitted that, and I'm quoting from
8 the statement of facts that Celsius admitted was true as
9 part of its non-prosecution agreement it entered with the
10 DOJ. The rise in the value of the CEL token was not the
11 product of market forces, but was instead attributable to
12 the fact that Celsius executives including Mashinsky had
13 orchestrated a scheme to manipulate the CEL token by taking
14 steps to artificially support the price of CEL.

15 Now, Your Honor will hear testimony from Mr.
16 Galka, our expert witness and Mr. Galka will corroborate
17 that admission and he will --

18 THE COURT: Is that admission entitled a
19 preclusive weight in this trial?

20 MR. COLODNY: I'm not sure, standing here today,
21 Your Honor. But what Mr. Galka will demonstrate by the
22 evidence is that applying every assumption Celsius' favor,
23 it purchased CEL -- it's purchases of CEL token exceeded the
24 amount of CEL token it paid the customer by over \$100
25 million. And that fact led him to conclude that Celsius was

1 taking actions to affect the price of the token prepetition.
2 And the market wasn't only affected by Celsius' purchase of
3 the token. The market was lied to as Celsius persistently
4 misrepresented its financial position and covered up those
5 lies.

6 It was not the case that some people knew and some
7 people didn't. Some people did. They watched the videos
8 live and then the clips were deleted. Now, you only have to
9 look at the first pages of our presentation where Celsius
10 and executives were telling the market everything was fine,
11 while under the curtain, they've admitted they were
12 insolvent by a billion dollars.

13 Now, prior to starting Elementus, Mr. Galka traded
14 complex derivatives for over nine years. Part of his role
15 in those positions was to identify dislocated markets or in
16 other words, markets where for the price of an asset did not
17 reflect its intrinsic value. And Mr. Galka will testify
18 that following the date that Celsius paused withdrawals based
19 on his review of market data and significant experience
20 trading dislocated markets, it is his opinion that the
21 market for CEL token was extremely dislocated and
22 thereafter, the market price was not remotely accurate
23 indication of its value.

24 Now, at the last hearing, you asked me the very
25 direct question, what will Mr. Galka say the CEL token is

1 worth on the petition date.

2 THE COURT: Yes, and I gave my permission earlier
3 today that a supplemental declaration can be -- I don't know
4 whether the order got entered or not. I was not at the
5 courthouse this morning, but I was asked that question. I
6 gather there was a request to be able to file a supplemental
7 declaration and I approved that.

8 MR. COLODNY: Correct, Your Honor. And the reason
9 why we want to file that supplemental declaration is we
10 understood that you want to give everybody the chance to see
11 the testimony. So we didn't -- even though we didn't want
12 it to come out on the (indiscernible). We wanted everyone
13 to have the opportunity. And what Mr. Galka will testify is
14 that if asked to put a price on the CEL token on petition
15 date, he would not have quoted a price. I think that's
16 unremarkable, and it's because he believes that the CEL
17 token had no value and there were no economics supporting
18 the value of the token on that petition date that he has
19 seen.

20 Mr. Ferraro, the CEO of the company, will
21 similarly testify that he believed the CEL token had little
22 to no value on the petition date and there is no
23 economically rational reason for the value to increase
24 between the pause and the petition date. Now, people have
25 taken issue with that conclusion, but it should come as no

1 surprise. In fact, well before the pause, Celsius disclosed
2 that the CEL tokens may become unusable, illiquid, and/or
3 worthless in the event that the Celsius platform ceases to
4 operate.

5 Now, that's enclosed in the risk disclosures that
6 as Your Honor found were accepted by 99 percent of all
7 accountholders. Put simply, Your Honor, it's unremarkable
8 that a token based off of the success of a company whose
9 sole use related to the operation of the platform that
10 company ran would have no value when that platform
11 spectacularly failed.

12 In closing, these cases have been a difficult
13 journey for all accountholders. The plan has been accepted
14 by an overwhelming amount of those accountholders and as
15 will be demonstrated throughout this week, it meets all the
16 requirements for confirmation under the Bankruptcy Code and
17 should be confirmed.

18 THE COURT: Thank you very much, Mr. Colodny.

19 MR. COLODNY: Thank you.

20 THE COURT: All right. Let me hear from the
21 United States Trustee next.

22 MS. CORNELL: Good morning, Your Honor.

23 THE COURT: Good afternoon, but very nice to see
24 you in the courtroom, Ms. Cornell.

25 MS. CORNELL: Shara Cornell for the record, the

1 Office of the United States Trustee. Your Honor, we
2 appreciate the hard work of all the parties in these cases
3 and their engagement with our office on various issues. We
4 have an active creditor body which began on first days,
5 continued through the 341 meeting with over 1,000 creditors
6 in attendance, up to and through this confirmation hearing.
7 But our role did not end at the 341 meeting, as is often the
8 case. This case required more.

9 We actively managed this case which resulted in
10 among other things, an examiner, an ombudsman, and several
11 cost saving measures, and the benefit of the work product of
12 the examiner has been discussed extensively previously.
13 Also given that the Debtors' assets are cryptocurrency, cash
14 management required unique disclosures and protocols to
15 safeguard these assets which are ultimately to be
16 distributed to creditors.

17 We worked with the professionals to ensure the
18 safety of these resources for the Debtors' estate and like
19 the Debtors and the Committee and many of the professionals
20 in this case, we have been routinely contacted by creditors.
21 There was activity by various individuals that resulted in
22 referrals to certain agencies, matters that we take
23 seriously as do our sister agencies and departments.

24 Like the Committee and the Debtors and their
25 professionals, we've also been on the receiving end of toxic

1 language and threats --

2 THE COURT: So has the Court.

3 MS. CORNELL: -- of course -- from creditors and
4 parties and interest. But through all of this, our goal has
5 remained steadfast. We moved this case along. We're also
6 following the letter and the spirit of the law. And we do
7 stand here today. We're nearing the finish line.

8 With all that said, we have a few objections
9 pending to confirmation which we were -- which were agreed
10 at the disclosure statement hearing to be heard today at
11 confirmation. And during the interim, we've engaged in many
12 discussions with the various professionals and the UST is
13 appreciative of those efforts to claw back in some respects,
14 the exculpation and release provisions. And there really
15 was a lot of negotiating and in some instances disagreement,
16 but overall the Debtors and their professionals worked
17 diligently to include many of our concerns.

18 We still hope that our remaining issues can be
19 negotiated before the end of this confirmation proceedings.
20 While these revisions were helpful, like the temporal
21 limitation, the exculpation provision, both the exculpation
22 and release provisions are still somewhat overbroad and need
23 further revisions and clarifications on the record, which we
24 expect the Debtors to do in the next few days.

25 First, with respect to exculpation, only estate

1 fiduciaries can and should be exculpated by the plan. While
2 the United States Trustee believes that a proper exculpation
3 tracks 1125(e) of the code providing for a limitation of
4 liability in connection with certain good faith solicitation
5 and plan participation efforts, Courts in this District, as
6 Your Honor knows, routinely follow a Aegean Marine Petroleum
7 Network, Inc., 599 B.R. 717. But here, the Debtors seek
8 exculpation for former and current --

9 THE COURT: I'm not sure I agree with that
10 statement completely. I think that judges on this Court,
11 including myself, have granted broader exculpation than that
12 decision. So there is not uniformity among the judges on
13 our Court.

14 MS. CORNELL: No, I would not say there's
15 uniformity, Your Honor. No. But it is often quoted and
16 used in this context.

17 Transactional parties are also exculpated in this
18 instance, but they're not limited to the specific
19 transactions that they took part in. Indeed, the ad hoc
20 Committees, the BRIC, Fahrenheit, the class claim
21 representatives, Coinbase, PayPal, all performed specific
22 and limited acts but are being provided broad protections
23 for any and all work done in connection with these cases.
24 The fact that a party is engaged in one action before a
25 Bankruptcy Court does not entitle that party to have all of

1 its actions within a bankruptcy case protected.

2 For example, exculpation for events, occurrences,
3 and agreements is vague and not necessarily limited under
4 Aegean. Furthermore, we believe a temporal scope is
5 necessary and one has now been added by the Debtors. But
6 the scope is confusing when read with the other provisions
7 because the other provisions refer to entities that are not
8 in existence and could not have performed any of the
9 appropriately exculpated actions during the identified
10 scope. Entities that are not in existence or could not p
11 perform the properly exculpated actions during the temporal
12 scope should be removed to avoid any confusion.

13 Second, the released parties are still over broad
14 as well. For example, the plan administrator is a released
15 party. The Debtors have not yet provided a factual basis or
16 a legal basis for his inclusion. What consideration the
17 plan administrator has made to the case must be identified.
18 Evidence of valuable consideration for each party is
19 necessary.

20 Also, while the Debtors allege that various
21 parties played an important role, for example, certain ad
22 hoc committees, it is unclear as to what valuable
23 consideration those parties gave yet, and the terms like
24 other professionals as it relates to released parties is
25 also somewhat unclear. Any party to be released should be

1 named in the plan and not just referred to, generally
2 speaking, as other professionals.

3 Moreover, the Debtors are yet to explain how
4 claimants that have rejected the plan will be bound by these
5 release provisions. You're not a releasing party if you
6 have rejected the plan, but you're also a releasing party if
7 you fail to vote for the plan. This question requires
8 additional information on the record by the Debtors.

9 Lastly, the confirmation order includes a waiver
10 of Rule 3020. Congress intended to give parties 14 days for
11 a reason and there is no basis to waive that in this case.
12 We do not want to force people or parties into expedited
13 motion practice, which is a waste of judicial resources and
14 estate money. The most recent agenda I believe was the 29
15 responses for confirmation, which is an unusually large
16 amount of responses, and we do not want to cut off the
17 rights of these parties.

18 There are a lot of issues and I think 14 days,
19 which is the rule not the exception, should be applied in
20 these cases. Also Your Honor, as an update, after the
21 hearing on Friday regarding the United States Trustee's
22 concerns about Committee membership, as the docket reflects,
23 we filed a supplemental notice of appointment at Docket No.
24 3631.

25 Additionally, Your Honor, United States Trustee

1 and the Committee have been in contact over the weekend and
2 have reached a resolution in principle regarding certain of
3 the exculpation language regarding to Mr. Noyes and any
4 potential actions associated therewith. The language is
5 currently being finalized and we hope to present that to the
6 Court later this week via the Debtor.

7 This concludes our opening remarks and we're
8 available to answer any questions from the Court or
9 otherwise.

10 THE COURT: Thank you, Mr. Solomon.

11 MS. CORNELL: Thank you.

12 THE COURT: All right. The Ad Hoc Earn Account
13 Group.

14 MS. KUHNS: Good afternoon, Your Honor. Joyce
15 Kuhns of Offit Kurman for the Ad Hoc Group of Earn
16 Accountholders. This has undisputedly been a long and
17 arduous road for the Earn customers, starting with the pause
18 and subsequent revelations of a systemic fraud perpetrated
19 on them, and then navigating the intersection of two
20 seemingly disconnected worlds, the decentralized world of
21 cryptocurrency which they were used to, and the centralized
22 bankruptcy forum which they were not.

23 There were many misunderstandings at that time.
24 New legal theories had to be tested, starting with who owned
25 the customer deposited cryptocurrency. It is no surprise

1 that the January 4 decision determining that it was property
2 of the estate sent shockwaves through the Earn community.
3 The concept of dollarization was also concerning,
4 dollarization of crypto claims as of the petition date, and
5 at a time when Bitcoin, for example, was steadily rising in
6 value. It led to the inevitable Earn question. Who is
7 benefiting from the appreciation in the crypto and why isn't
8 it us?

9 These were among the concerns that led to the
10 formation of the Ad Hoc Earn Group by significant Earn
11 claimants who realized the need to come together and speak
12 with a unified voice to advance their common goals. On
13 behalf of the Ad Hoc Group, Mr. Nagi and I would like to
14 publicly thank Brett Perry, Nicholas Farr, and Immanuel
15 Herrmann, the founders of the Ad Hoc Group and its original
16 steering committee members of which Mr. Herrmann was chair,
17 who were dedicated from the onset to two guiding principles,
18 parity among creditors and consensus building, and never
19 wavered in serving the larger Earn community even at the
20 expense of their individual interests.

21 The first test of the ad hoc's cohesiveness came
22 with a July mediation before Judge Wiles. It also served as
23 a reality check of what could be accomplished and what could
24 not under the Bankruptcy code. The group's acceptance of
25 certain constraints such as dollarization of crypto claims

1 on the petition date led to a successful mediation that set
2 the treatment of Earn versus Borrower claims, led to the
3 Borrower settlement, critical milestones on the path to plan
4 confirmation among other things achieved in the mediation
5 term sheet.

6 Having had a seat at the table at the mediation,
7 the Ad Hoc and its larger constituency recognized the
8 importance of keeping a seat at the table as future
9 stockholders of Newco. This led to intense series of
10 negotiations among the primary stakeholders, resulting in
11 the Newco -- the three Newco board observer seats being
12 designated by the Ad Hoc Earn Group and Earn designee
13 appointed to the Litigation Oversight Committee responsible
14 for prosecuting future litigation to enhance creditor
15 recoveries, and lastly, to enter into a plan support
16 agreement among the Debtors, the Committee, the Ad Hoc Earn
17 Group, certain Earn pro se claimants, the class action
18 plaintiff Mr. Tuganov, and Simon Dixon.

19 No one got everything they wanted in this case,
20 but everyone had an opportunity to be heard in this
21 courtroom and we appreciate that, Your Honor, as well as to
22 be heard outside the courtroom in an unprecedented mix of
23 media, mass emails, Twitters, telegram, Twitter spaces, town
24 halls and YouTube presentations. The active participation
25 of creditors in this case has set a new bar for creditor

1 engagement, enabling consensus building to occur and
2 culminating in the astounding result of almost \$2.5 billion
3 in Earn claims voting to accept a plan in a crypto case.

4 No one did this alone, admittedly, but as a result
5 of the dedication of many, including the tireless efforts of
6 the Debtors' new management, the Committee, their respective
7 counsel, and their professionals, in a very complex case
8 which as you've heard had many, many active constituents and
9 novel issues. In the end, the major stakeholders came
10 together in their commitment to deliver the best outcome
11 possible to creditors with the quickest exit achievable.

12 Now we are at the final stage. We look forward to
13 a successful confirmation process and the long awaited start
14 of distributions, hopefully in 2023, as well as the future
15 opportunities presented to creditors as shareholders in
16 Newco. Thank you, Your Honor for the time today on the
17 agenda.

18 THE COURT: Thank you for your presentation. All
19 right, counsel for the Ad Hoc Borrowers Group.

20 MR. ADLER: Good afternoon, Your Honor. David
21 Adler from Carter & English on behalf of the Ad Hoc Group of
22 Borrowers. First, I want to say it's again pleasure being
23 back in this courtroom. This is only the second time that
24 I've been here since COVID started. The first was in June,
25 maybe July.

1 But I wanted to talk a little bit about the
2 concerns of the Borrowers, and as Your Honor knows, the
3 group that I represent are the group of individuals who
4 transferred their crypto onto the Celsius platform in
5 exchange for a loan and for which they paid interest. So
6 they paid interest. They did not take interest out. And
7 that was primarily a choice that they made because they
8 wanted to have some liquidity against their crypto, but they
9 didn't want to run the risk of having a disposition event
10 because many, many of the borrowers and Celsius have
11 extremely low basis. And a disposition event would be very,
12 very bad in this case, especially for some of the higher
13 borrowers.

14 So, going back in time to March, we were happy
15 with the NovaWulf transaction because it kept the loan alive
16 and following the auction, we received thereafter a plan
17 that, in which the Debtor wanted to exercise its setoff
18 rights, which would potentially be very, very bad for the
19 Borrowers in terms of a disposition. And that was sort of
20 the groundwork where we were when we got to the mediation.

21 So after three intensive days of mediation down
22 the hall and upstairs, the Borrowers reached -- or the
23 steering group reached a resolution on the issues in which
24 the Borrowers would pay back the loans if they could. They
25 were given the option to do that. As Mr. Koenig said

1 earlier, the Debtors have indicated that they'll cooperate
2 in terms of finding a new lending source, and we've spent
3 many, many, many hours since the mediation identifying new
4 sources who can provide refinancing to the Borrowers. And
5 in exchange for that, the excess claim is essentially, is
6 treated as the Earn claim.

7 The Borrowers will get back 100 percent of their
8 principal amount in crypto if it's Bitcoin and ETH, but not
9 in the other currencies. So from the Borrowers'
10 perspective, that was a result that they could live with.
11 Certainly, the voting reflects that the Borrowers were --
12 that the plan was acceptable to the Borrowers, and I do want
13 to say that probably the biggest issue in the mediation was
14 over the liquid crypto weighted distribution because for the
15 Borrowers that need to refinance, they need to get as much
16 crypto as possible in order that their LTVs are in the range
17 that traditional crypto lenders require. And it's hard to
18 say that, traditional crypto lenders, but be that as it may.

19 So Your Honor, we have -- I worked consensually
20 with the Debtors and the Committee. I want to thank Mr.
21 Koenig, Mr. Kwasteniet, Mr. Colodny, Mr. Wofford for all
22 their assistance over the last few months in trying to get
23 to an achievable plan. We do have a couple of issues that
24 will need to be addressed at some point. I mean, one issue
25 and I've raised it with Mr. Koenig and Mr. Colodny. It's

1 not a big issue, but there's -- there was supposed to be an
2 election on the ballot form for whether the Borrower wished
3 to repay or not which did not make it on the ballot. Some
4 subsequent form of notice needs to be sent out to the
5 Borrowers so that they can make that election.

6 And there are also some timing issues that need to
7 be addressed in the plan, but I consider those minor non-
8 substantive issues in this plan. I mean, the result that
9 was achieved at the mediation as a result of that --

10 THE COURT: How many Borrowers are there?

11 MR. ADLER: 23,000, Your Honor. Now, when I say
12 23,000, there are some Borrowers -- if you have Bitcoin and
13 you had ETH, you show up twice on the spreadsheet. So when
14 you cull all those out, it's probably more like 18,000 or
15 so. Approximately half of them are in the United States;
16 approximately half of them are international, with the
17 biggest international locations being Australia, Spain. I
18 think actually Poland is one of the largest jurisdictions
19 and that's because the largest Borrower in this case who
20 I've never spoken to, is apparently a resident of Poland.
21 And you know, I mean, I think that that Europe and Australia
22 dominate on the borrower side of the equation.

23 So, obviously we have a couple of issues to work
24 out, but we are supportive of the plan. The voting reflects
25 it. There have been people, Borrowers, who have asked Your

1 Honor for a ruling on the collateral and the only thing that
2 I would say is we would ask Your Honor to limit that ruling
3 to whether it is property of the estate or not, okay, so
4 that we're not making any rulings about any other potential
5 issues.

6 THE COURT: Okay, thanks, Mr. Adler.

7 MR. ADLER: Okay. Thank you, Your Honor. On that
8 note, I will conclude.

9 THE COURT: Thank you. Thank you very much. I've
10 said this before. I greatly appreciate what my colleague
11 Judge Wiles did in the three-day mediation. There were lots
12 of issues that got resolved. Essentially, it was very
13 important to us being here today. I appreciate that.

14 All right, the Withhold Ad Hoc Group, Ms. Kovsky.

15 MS. KOVSKY-APAP: Good afternoon, Your Honor. Deb
16 Kovsky, Troutman Pepper, on behalf of the Withhold Ad Hoc
17 Group. As Your Honor knows, at the outset of these cases,
18 the Withhold accountholders, including members of the
19 Withhold Ad Hoc Group were kind of a weird no man's land on
20 the Celsius platform. They weren't in the Earn program
21 anymore and if the Debtors had been able to offer custody
22 services in their states of residence, they would have been
23 in Custody, but that wasn't the case. So instead their
24 status was kind of ambiguous, neither fish nor fowl.

25 And the question of the status of their assets

1 could have been litigated all the way to resolution,
2 possibly through appeals at great expense and uncertainty.
3 Instead, the Withhold Ad Hoc Group, the Debtors, and the
4 Committee found a more efficient pathway to deal with the
5 complex and novel questions regarding property of the estate
6 raised by the Withhold assets, and those discussions and
7 pathway resulted in the Withhold settlement, a compromise
8 that provided enhanced treatment for the Withhold
9 accountholders while allowing a substantial bucket of assets
10 to be treated as property of the estate.

11 And the settlement was embodied in the plan and
12 has been overwhelmingly accepted by Class 7, the Withhold
13 accountholders. The Withhold Ad Hoc Group appreciates the
14 Debtors' and the Committee's willingness to work with us and
15 to find a compromise solution that recognize the claims of
16 the Withhold accountholders while avoiding the cost and
17 complexity of an extended litigation.

18 Withhold Ad Hoc also appreciates the Debtors and
19 the Committee working with us on our informal comments to
20 the plan which obviated the need to file a formal objection.
21 The Withhold Ad Hoc Group was concerned about the potential
22 preclusive effect that the Debtors' calculation of
23 withdrawal preference exposure under the plan might have.
24 The Debtors and Committee agreed to add clarifying language
25 that those calculations will not be binding on any defendant

1 in a subsequent avoidance action.

2 Even more importantly, the plan as it was
3 originally solicited out appeared to give the plan
4 administrator unfettered discretion to distribute fiat
5 currency rather than cryptocurrency to accountholders. Now,
6 we understand that the plan does provide for the retention
7 of distribution agents for the purpose of distributing
8 cryptocurrency, but those are time limited contracts and
9 there was nothing in the plan that really pushed or
10 encouraged the distribution of crypto rather than fiat.

11 And as Your Honor is well aware from the course of
12 this case, and as Mr. Colodny alluded to, many
13 accountholders feel very, very strongly about getting back
14 crypto, not fiat currency . And this is particularly true in
15 instances where there may be a delay in a claim becoming an
16 allowed claim. So accountholders are very concerned about
17 potentially not getting the benefit of the appreciation and
18 value of crypto if the plan administrator could simply
19 distribute fiat currency at some later point in time.

20 The Debtors and the Committee agreed to language
21 requiring the plan administrator to use commercially
22 reasonable efforts to make distributions in liquid
23 cryptocurrency, rather than fiat, to the greatest extent
24 possible. The language requires reserves on account of not
25 yet allowed claims to be held in the form of liquid

1 cryptocurrency. And if by the time a distribution is to be
2 made, there isn't a distribution agent around who can
3 actually distribute crypto, the plan now requires that the
4 crypto be converted to fiat as close to the distribution
5 date as possible, the idea being that this would allow the
6 amount of the fiat to mirror as closely as possible, the
7 appreciated value of the crypto that otherwise would have
8 been distributed.

9 And these changes provide important protections to
10 accountholders. We really appreciate the constructive
11 approach taken by the estate's professionals in negotiating
12 these terms with us.

13 Finally, I wanted to say a couple of words about
14 the ADR procedures. The Withhold Ad Hoc Group filed a
15 reservation of rights with respect to the ADR procedures in
16 connection with the disclosure statement hearing. Since
17 then, we've had extended discussions with the Committee's
18 professionals resulting in significant modifications to the
19 proposed procedures.

20 The Committee has clarified that the procedures
21 are not binding on anyone who did not file a proof of claim
22 and revisions to the procedures which were filed as a
23 redline also make it easier and more straightforward to opt
24 out, and among other changes, make the flow of information
25 between the parties mutual rather than one sided.

1 However, as I'm sure you'll hear more from Mr.
2 Kleiner, the ADR procedures are not yet finalized and it
3 does seem a little bit odd and perhaps premature for the
4 Court to approve procedures that are still being discussed
5 and negotiated.

6 The Withhold Ad Hoc Group did not see this as a
7 basis to deny confirmation of a plan, particularly one with
8 widespread support of creditors, including the members of
9 the Withhold Ad Hoc Group themselves; however, we suggest it
10 may make more sense to defer approval of the ADR procedures
11 until they're more fully baked. But either way, whatever
12 the Court rules, we will certainly continue to --

13 THE COURT: Speed up the process and finalize
14 everything.

15 MS. KOVSKY-APAP: We are absolutely working on
16 that. We are continuing to negotiate the procedures in good
17 faith, exchanged emails today and we are working
18 expeditiously. So, in conclusion, the Withhold Ad Hoc Group
19 believes the plan is not perfect but no plan of
20 reorganization ever is. We do believe that it is the best
21 option under the circumstances and we are happy to join the
22 Debtors, Committee, and other ad hoc groups in supporting
23 it.

24 THE COURT: Thank you very much, Ms. Kovsky. All
25 right. Next is Mr. Frishberg.

1 MR. FRISHBERG: Thank you, Your Honor. To start
2 off with, I think everyone will agree that I'm direct and I
3 speak my mind, so I will do so today. I believe that
4 confirming this plan is the best path forward for creditors
5 that we have at this time. And I'm not saying this only
6 because I'm the PSA, I'm saying this because I truly believe
7 it, that this is the best option we have currently.

8 The Debtors, the UCC, the U.S. Trustee, numerous
9 regulators, all the professionals in this case, and more
10 have done a very, very good job thus far. (indiscernible)
11 know, this is a very complex and unusual case. The Debtors
12 and the UCC have stated that accountholders overwhelmingly
13 support the plan, including the visions about the EIP
14 bonuses and releases.

15 I would like to add a bit of clarity to that.
16 Something I have not heard mentioned thus far is that the
17 reason people, creditors such as myself voted for it, it was
18 the only option that was not a very bad scenario of the plan
19 getting voted down. Customers are very openly against the
20 overly, in my opinion, broad releases to the plan, but
21 again, it is what it is, to (indiscernible) employees and as
22 well in my opinion, the unnecessary (indiscernible)
23 employees.

24 The reason they voted for it is as well as I did
25 is because they want it to be over. An analogy that I think

1 sums this up well, is imagine that you are (indiscernible)
2 deserted island in the middle of nowhere and then you find
3 some moldy bread, a tiny bit of mold. You're going to eat
4 the bread since it is better than starving to death. I know
5 I would eat the bread and it seems about 98 percent of
6 creditors chose to also eat the bread. Though I would love
7 nothing more than to cut off the moldy parts which include
8 the EIP bonuses and a few others. It's not an option, so I
9 voted for the plan.

10 We must (audio glitch) and we must (audio glitch).
11 This is (audio glitch) the plan being confirmed regardless
12 of the presence of the metaphorical mold, trimming off the
13 metaphorical small moldy parts would improve the plan, but
14 slightly moldy bread is better than nothing in this
15 scenario. Thank you, Your Honor.

16 THE COURT: Thank you very much, Mr. Frishberg.
17 All right, Mr. Sabin, you're going to argue for Mr. Tuganov?
18 Just so everybody knows, my plan is after Mr. Sabin, we have
19 three more openings in opposition to the plan. We'll take a
20 brief recess after Mr. Sabin and before we proceed with the
21 remaining three. Mr. Sabin, good afternoon.

22 MR. SABIN: Thank you, Your Honor. It's a
23 pleasure to be back here in person. It's a pleasure to
24 hopefully soon stand here and thank many people for tireless
25 work. I am Jeff Sabin from Venable on behalf of Ignat

1 Tuganov, a long time Earn rewards customer, creditor, one of
2 three class representatives appointed pursuant to the now
3 final order of this Court approving the settlement of the
4 class proof of claim that among other things allowed
5 noncontract claims for all accountholders.

6 And he was also and still is a party to the plan
7 support agreement and spent the better part of his three
8 days, and I did, too, before Judge Wiles. And you've
9 already taken notice of the benefits of that.

10 I requested ten minutes to otherwise speak to
11 support this plan, to cover matters material to confirmation
12 not covered or otherwise that I thought needed to be
13 supplemented by the very good efforts of all those who come
14 before me, be it Debtors' counsel, UCC counsel, or other
15 supporters. I'm happy to say that if I were a contestant on
16 "Name That Tune," I can do it in two minutes.

17 But here goes. First and most importantly, you
18 asked Mr. Colodny a question that I have a supplement to an
19 answer. There is a provision in the order of approving the
20 class settlement agreement, now final, that otherwise waived
21 objections to otherwise trying to subordinate pursuant to
22 510(b) any of the claims of Earn customers and/or retail
23 borrower customers.

24 Secondly, I believe that that the plan as amended
25 is confirmable, not only because I have confidence that the

1 record will establish by all of the witnesses and the
2 testimony to be educed that otherwise you can make findings
3 of fact that would be supportive of confirmation, but also
4 by the vote itself and the use of the vote in connection
5 with three settlements, not that you otherwise approved, but
6 are embedded in the plan including the retail borrower
7 settlement, which has in it as a component part not yet
8 mentioned in the record of an additional substantive
9 consolidation of several lenders in this case and several
10 debtors in this case.

11 And finally and most importantly, as you've heard,
12 Mr. Tuganov is no different than all of the other customers.
13 He is waiting and hopefully sees the light at the end of the
14 tunnel, indeed, that the PSA milestones of October 31 for
15 entry of a confirmation order and a December 31, 2023
16 effective date can be had.

17 In addition, as you heard from Mr. Colodny,
18 there's no promise that all the conditions to the effective
19 date can be done, but I think we are confident that the
20 tireless efforts will continue, not just of the Debtors and
21 the Committee and the U.S. Trustee, but the regulators
22 themselves and of course, the plan sponsor such that the
23 transparency referred to by Mr. Koenig is indeed going to be
24 helpful to satisfy those conditions.

25 And so, like so many others, it has been a long

1 and winding road, and as the song goes, I hope that we soon
2 get to sing a different tune. Maybe everyone can sing happy
3 or at least happier. Thank you, Your Honor.

4 THE COURT: Thank you very much, Mr. Sabin. All
5 right, we are going to take -- it's 3:40. We'll take a ten-
6 minute recess. We'll resume at 3:50 and when we resume Mr.
7 Ubierna, you're up next, okay? All right.

8 (Recess)

9 THE COURT: Everybody can sit down. All right,
10 the Court is back in session. Mr. Ubierna, it's your turn
11 for an opening statement.

12 MR. UBIERNA DE LAS HERAS: Good afternoon, Your
13 Honor. Victor Ubierna, pro se creditor. Thank you for your
14 time. First, English is not my native language as I am from
15 Spain. So I ask that you forgive me if I make any mistake I
16 speak in English. During this Chapter 11 bankruptcy, I have
17 filed some objections and joinders. Since the beginning, I
18 believe that while other people were just complaining in
19 social media, the way to be useful to others was to file
20 formal documents.

21 With regard to plan confirmation, I filed an
22 objection with Docket No. 3542. This bankruptcy have been
23 particularly difficult for many people, so I don't object to
24 closing this difficult chapter in their lives. I objected
25 to two items. First, regarding the emergence incentive

1 program, I argue that insider employees already receive
2 salaries, that they have a fiduciary duty to act in the best
3 interest of the company, and that the bar is very low for
4 these rewards. For example, Ferraro will receive a bonus if
5 this Court confirms a plan before the end of October. It is
6 obvious that a Chapter 11 CEO should be working to get a
7 plan confirmed.

8 Furthermore, a lot of the metrics are just what
9 they should be doing as employees. These targets are
10 objectives that are well within the scope and scale of their
11 existing contractual obligations to the company as
12 stakeholders and creditors. Some items haven't got
13 numerical targets and (indiscernible) and can be easily
14 abused.

15 Secondly, I also believe that the releases are too
16 broad and that creditors did not have a real chance to opt
17 out. (audio glitch) argue that the third party releases are
18 wholly consensual; however, evidence does not point on that
19 direction. I want to remark that a little more than 5,000
20 holders in voting classes that voted to accept the plan
21 attempted to select the third-party release opt out and were
22 not permitted to do so. How can they argue that releases
23 are wholly consensual if 5,160 creditors are being forced
24 into them against their will? I joined what the UST has
25 just said about the releases.

1 Lastly, I do welcome the change that the Debtors
2 made to the release and the exculpation provision. They
3 clarify that what happened on the failure to file a proof of
4 claim on the Voyager bankruptcy is not covered by those
5 provisions. That is a good change in response to my
6 objection. Thank you. Nothing more for today, Your Honor.

7 THE COURT: Thank you very much, Mr. Ubierna.
8 You've been a regular participant in the hearings and I
9 appreciate hearing from you. Thank you. All right, counsel
10 for Pharos Fund.

11 MR. NOSKOV: Your Honor, Victor Noskov, Quinn
12 Emanuel on behalf of Pharos. We're here today for an
13 objection on the best interest of creditors test. The test
14 is simple. It's simply whether the Debtors would realize
15 more value under Chapter 7 than what they would realize
16 under the plan as proposed by the Debtors.

17 As Your Honor aptly noted with regard to the CEL
18 token valuation, the test, the burden is on the Debtors to
19 prove that the test is satisfied and as long as the plan is
20 not unanimous, and here our client has objected to the plan,
21 they have to carry that burden.

22 Our simple position is that they have not, that
23 there's insufficient evidence in support of the best
24 interest of creditors test here. And that is for two
25 reasons. On the one hand, in support of their plan, the

1 Debtors submit a liquidation analysis that is severely
2 depressed.

3 THE COURT: It usually is.

4 MR. NOSKOV: Correct, Your Honor, but usually with
5 justification. And in our view, the evidence this week will
6 show that the severely depressed value which is by about 80
7 to 85 percent of the plan value -- and not just compared to
8 the going concern value, but also to the orderly winddown
9 value scenario under the plan, it's -- the Chapter 7 process
10 is severely depressed.

11 I think the only real argument that is in the
12 declaration supporting such devaluation of the liquidation
13 analysis is a view that's expressed that a Chapter 7 Trustee
14 whose fiduciary duty it is to maximize value of the estate
15 for the creditors and who's empowered by the Bankruptcy Code
16 to do so would not be able to run a proper sale process of
17 these particular assets. And we intend to probe why the
18 Debtors have arrived at that conclusion throughout this
19 week, Your Honor.

20 THE COURT: You placed zero value on Newco.

21 MR. NOSKOV: I can get to Newco as well, Your
22 Honor. I'm not so sure that we place zero value.

23 THE COURT: What value do you place on Newco?

24 MR. NOSKOV: We -- well, I think the question,
25 Your Honor is whether the Debtors place the correct value --

1 THE COURT: I understand that, but do you place
2 any value on Newco?

3 MR. NOSKOV: Yes, we --

4 THE COURT: What value do you place on Newco?

5 MR. NOSKOV: We think that the value -- that the -
6 - we don't disagree with the inherent value that the Debtors
7 present. We just think it should be severely discounted or
8 discounted at all based on the several risk factors that the
9 Debtors have themselves identified in these cases including
10 in the disclosure statement.

11 THE COURT: So you're not disputing the value they
12 place on it, but you, you believe it should be discounted
13 from the value they placed on it?

14 MR. NOSKOV: I believe the way that they've
15 arrived at the value, which again, will come in through
16 evidence and we will probe exactly how they did so because
17 we think the disclosure has not been sufficient, we believe
18 that that testimony will show that they did not adequately
19 discount it based on risk factors that they have identified
20 themselves and based on how creditors have spoken in
21 choosing their options under the plan.

22 So with that, Your Honor, I think that goes to the
23 Newco value. That has nothing to do with the orderly
24 winddown scenario which the Debtors propose, which is a
25 value of \$450 million for the assets, which compared to the

1 liquidation value, which is about 88, is significantly
2 higher and I'm not sure why --

3 THE COURT: But you agree, I take it, that a
4 comparator has to be the liquidation value, not the orderly
5 winddown value, the comparator for the best interest test --

6 MR. NOSKOV: The best interest test should compare
7 what would happen in a Chapter 7, the hypothetical Chapter 7
8 proceeding, versus the winddown value or the plan value,
9 whichever one is more likely. It's a difficult comparison
10 and we'll probe which one is really appropriate, but yes,
11 it's what would happen in a Chapter 7 value, but I don't
12 think that it's appropriate to devalue what would happen in
13 a Chapter 7 by as much as the Debtors have done here. There
14 are tools at the behest of the Chapter 7 Trustee that --

15 THE COURT: May I ask, do you plan to call any
16 witnesses on liquidation value?

17 MR. NOSKOV: We ourselves are not in a position to
18 put in witnesses ourselves. To the extent that the Court
19 would be willing to override the deadlines that have
20 occurred --

21 THE COURT: No, I -- the deadlines are the
22 deadlines, but the deadline for those to submit direct
23 written testimony in opposition to the plan hasn't run yet.

24 MR. NOSKOV: The deadline, I believe, Your Honor,
25 for experts has passed and our client was not in a position

1 to do so. To the extent that Your Honor suggests we can put
2 in affirmative evidence, we'd be glad to do so.

3 THE COURT: Bear with me a second. The order
4 establishing case management procedures for the confirmation
5 hearing is ECF 3478. In Paragraph 4 on page 3, says, "On or
6 before 12 noon October 11th, 2023, all parties in interest
7 shall file and docket written direct testimony under oath
8 and copies of exhibits that they expect to offer in
9 opposition to confirmation."

10 MR. NOSKOV: Your Honor, that that comes as a
11 surprise to me and if that's the case --

12 THE COURT: It's on the docket. That's been --
13 you know, this order was entered on September 15th because I
14 wanted to be sure everybody knew when they had to put in
15 evidence.

16 MR. NOSKOV: I appreciate you pointing us to that
17 order, Your Honor, and certainly something that we will
18 consider. But my point today is only --

19 THE COURT: Here's what I want to know.

20 MR. NOSKOV: Sure.

21 THE COURT: Do you plan[to offer evidence or
22 simply to cross examine the Debtors' witnesses -- Debtor and
23 the Committee's witnesses?

24 MR. NOSKOV: We certainly intend to cross examine
25 the Debtors' witnesses, Your Honor. Our client, given the

1 situation -- and certainly I can explain what it is --

2 THE COURT: I'm not interested in your client's
3 situation --

4 MR. NOSKOV: -- has not, to this date, been able
5 to -- we, with the client, have not gotten to a point where
6 we can put in evidence affirmatively, but we may, Your
7 Honor.

8 THE COURT: That's fine. You can cross examine
9 their experts, but I just wanted to know -- October 11th was
10 the deadline for anybody in opposition to confirmation to
11 put in written evidence, and I was trying to ascertain
12 whether it's your expectation that you're going to offer
13 evidence by October 11, written evidence.

14 MR. NOSKOV: Your Honor, if I may, may I reserve
15 on that and answer and --

16 THE COURT: Yes. The deadline hasn't come yet.

17 MR. NOSKOV: Thank you very much. Getting back to
18 regardless of affirmative evidence, which we may or may not
19 put forward, we think that on their own, the disclosures
20 that are provided by the Debtors are insufficient to support
21 the analysis that they provided. I think on the one hand,
22 they depress value of a Chapter 7 process which actually
23 Courts have called an orderly winddown just the same as what
24 they're proposing with the orderly winddown scenario.

25 We think that the Chapter 7 Trustee is well within

1 its power to run a sophisticated process and so that
2 discount is much too low. And on the other side of the
3 equation, we think that appropriate discounts have not been
4 applied to the value of the Newco and the other assets that
5 would be, you know, part of the proposed plan.

6 We think that obviously the -- in some sense, the
7 best interest of creditors is mathematical and so once you
8 push one of those values up and one of them down, that the
9 Debtors do not satisfy the test under 1129(a)(7), and
10 therefore the claim should be rejected. And we think that,
11 with just the bare conclusionary assertions that are in the
12 declaration without further backup and without our ability
13 to probe them in cross examination, the Debtors cannot
14 satisfy the test.

15 THE COURT: Thank you.

16 MR. NOSKOV: Thank you.

17 THE COURT: All right. Harrison Schoenau. Is
18 that you, Mr. Kleiner?

19 MR. KLEINER: Yes. Thank you. Thank you, Your
20 Honor. Good afternoon.

21 THE COURT: Go ahead, Mr. Kleiner.

22 MR. KLEINER: Barry Kleiner from Kleinberg,
23 Kaplan, Wolff & Cohen for Harrison Schoenau. I asked the
24 Court for five minutes of time to frame our position and I
25 very much appreciate the opportunity, but I hope to follow

1 Mr. Sabin's lead and he's much less than that.

2 To be clear, we are not objecting to the plan
3 itself. Rather, we filed a limited response objecting
4 solely to approval of the ADR procedures as implemented in
5 the plan and as they apply to avoidance action defendants.
6 We laid out the specific items we objected to in our
7 response that was filed as Docket No. 3529 and the Debtor
8 and Committee (indiscernible). I know that you'll read our
9 objection and the responses, so I just wish to make two
10 points today.

11 First, we are primarily here because the Committee
12 has insisted on retaining the right to (indiscernible) ADR.

13 THE COURT: Say that again? I'm sorry, just
14 repeat that.

15 MR. KLEINER: Yes, so we're primarily here because
16 of the fact that the Committee has retained in the ADR
17 procedures the right to force parties into ADR even if they
18 (indiscernible). As Ms. Kovsky noted, we have been in
19 discussion with them and the Committee, for example, has
20 agreed that parties can't be forced to offer counter, but
21 nonetheless, we're a bit troubled by the insistence that
22 even if they (audio glitch) they're forced to proceed with
23 ADR. We're troubled that that remains a (indiscernible).

24 The other point is, (audio glitch) I want to
25 address, again, as Ms. Kovsky noted, the procedures aren't

1 yet complete. We have been, since the disclosure statement
2 hearing -- and I don't want to understate this. In fact,
3 the parties have been cooperating in good faith working
4 together. The procedures that were filed in preparation for
5 confirmation differ from those that were filed at the time
6 disclosure statement and much progress has been made, but
7 some items remain open.

8 Since the time we filed the objection and right
9 now, the parties have been in communication and we expect
10 that we'll continue to communicate and hopefully resolve
11 these issues. But as we stand here today, it's not done yet
12 and you don't have in front of you a final (audio glitch)
13 procedures to approve.

14 So we ask two things. One, if Your Honor is to
15 approve ADR (audio glitch), we understand why you might, you
16 don't -- you approve them without the ability to force
17 people who don't think it would be (audio glitch) to
18 participate. And second, since the procedures still remain
19 incomplete, you would delay approval until the parties have
20 had a time to finish it.

21 I would just submit that there's really -- there's
22 no urgency to this particular issue until the effective
23 date. It's not something that has to be done by
24 confirmation. Obviously, we would like to, but really, this
25 is something that's only relevant when the plan is prepared

1 to go effective because it really deals with claims
2 objections and avoidance actions which have not yet been
3 brought. Thank you.

4 THE COURT: All right, let me just make a couple
5 of comments on that. One, I think I commented earlier,
6 speed it up, because assuming that the plan is confirmed, I
7 don't want to leave issues hanging out there. Okay. This
8 is a little different than some of the other issues, but
9 it's my goal that everything be resolved if the plan is
10 going to be confirmed.

11 Second, I'm not saying that the issues as to which
12 the ADR proceeding -- procedures would apply are identical
13 to the issues I've had in other cases, but I will just tell
14 you, I have in large Chapter 11 cases, I have approved
15 mandatory ADR procedures. You know, the issues here may be
16 a little different. You may have arguments why you don't
17 think it should be mandatory. But I -- in more than one
18 large case, I have approved mandatory ADR procedures. Just
19 saying that.

20 I may -- you know, you or somebody else may be
21 able to persuade me, well, that should -- it should be
22 different here for whatever the reason. Now is not the time
23 to argue it. What I would urge is, and I appreciate you
24 indicated certainly willingness to continue to do this, is
25 try to hammer out these issues in a way that's consensual.

1 Okay?

2 MR. KLEINER: I agree, Your Honor. I think we
3 just didn't quite have enough time --

4 THE COURT: And I understand that. Okay. All
5 right. We have heard all of the opening statements from
6 people who requested openings. The order that I had entered
7 with the order in which, and the time allocation -- and I
8 appreciate that everybody stuck to their time allocations.
9 Very much appreciated.

10 So I wanted to talk -- and anybody who wants to be
11 excused certainly can be. There were issues about how
12 exhibits are going to be handled and I raised this in a
13 prior hearing, just -- I conduct public trials. Sealing or
14 redaction has to be an absolute minimum. And I wanted to
15 cover some of those issues, and I didn't get a chance to
16 look at over the weekend -- trust me, I was working on this
17 -- the sealing motion that was made, so I want to get a
18 better understanding.

19 So let me just make some general points on it and
20 I'm willing to hear argument, and frequently it's the U.S.
21 Trustee who rightfully, in my view, is defending what the
22 Bankruptcy Code creates as the presumption that all these
23 bankruptcy hearings are going to be public. I appreciate
24 that. Okay. There are certain things, from what I've
25 looked at and talked with my clerks about, that I have less

1 problem with that.

2 For example, the Debtor has unresolved litigation
3 claims that it's pursuing. StakeHound, to -- just to name
4 one. I certainly don't think that the Debtor should be
5 obligated to file exhibits on the public -- unredacted
6 exhibits on the public docket that say how they internally
7 have assessed those claims. That's just an example.

8 So yes, there are things that should be redacted.
9 How we deal with it during the hearing is -- also can be an
10 issue. When I've had in other cases in trial where we don't
11 -- where a witness is testifying and involves some redacted
12 documents, we've usually tried to keep the test -- they've
13 been directed, don't talk about the numbers that have been
14 redacted, talk more generally, including a cross
15 examination.

16 So yes, I have dealt with it in the past. So I
17 would like to get a better idea. I guess the thing -- and I
18 said this at the last hearing we had, when I heard that the
19 Debtor was proposing a link on the docket that required
20 people to sign a confidentiality agreement, that was
21 unacceptable to me. So -- but go ahead.

22 MR. McCARRICK: Yes, Your Honor. The amended --

23 THE COURT: -- identify yourself.

24 MR. McCARRICK: I'm sorry. T.J. McCarrick,
25 Kirkland & Ellis, on behalf of the Debtors. The Debtors

1 filed an amended motion to seal at Docket No. 3644. It
2 supersedes the initial --

3 THE COURT: Okay.

4 MR. McCARRICK: -- request for sealing at Docket
5 No. 3635. We've substantially narrowed the scope of
6 information on the exhibit list that we seek to seal. It's
7 only certain cells on four exhibits and candidly, Your
8 Honor, it's not even clear that those are going to be
9 offered into evidence. So I don't expect this is going to
10 be an issue to your practical point of whether or you'll
11 have to seal the courtroom or how we address it.

12 There are four Excels and there are tabs. So
13 Exhibit 53, it's the Coin Manual Adjustment tab and it cells
14 B15, B17, E15, to E17. For Exhibit 55, it's the Coin Manual
15 Adjustments tab and cells B14 to B16, B101 to B103, E14 to
16 E16, and E101 to E103. For Exhibit 56, again it's the Coin
17 Manual Adjustments tab and it cells B14 to B16, B101 to
18 B103, E14 to E16, and E101 to E103. And finally, it's
19 Exhibit 62, it's the Coin Manual Adjustments tab, the
20 Comments column and the CBP Illustrative Recovery tab, cells
21 K55 to K57.

22 And what we're dealing with here, Your Honor, it's
23 relating to litigation and asset recovery assessments. And
24 so the redactions are pretty slim at this point.

25 THE COURT: Here's what I would ask you to do.

1 Maybe you've done it already. Confer with the Committee and
2 the U.S. Trustee, and let's see if those parties are in
3 agreement about it, and if they are, then I'm okay with
4 sealing -- or redaction. It's not wholesale sealing, it's
5 redacting certain cells -- subject to further order of the
6 Court so that if evidence develops in a way that I -- that,
7 you know, we have to address it, we'll address it.

8 But if the U.S. Trustee, the Committee and the
9 Debtors agree on these redactions, we go forward on that
10 basis subject to any subsequent Court ruling, which in
11 principle what you describe, I understand the reason for
12 doing that and I'm fine with it, okay. But I want you to
13 have a discussion with the U.S. Trustee about it.

14 MR. McCARRICK: Yes, Your Honor.

15 THE COURT: Because what I found is they're the
16 only ones who really try to protect the public interest and
17 disclosure of what happens. Okay.

18 MR. McCARRICK: That's it, Your Honor.

19 THE COURT: Okay. I guess it was PII and --

20 MR. McCARRICK: Yeah, the --

21 THE COURT: The PII, I think I already said,
22 absolutely should be redacted.

23 MR. McCARRICK: Yes. Just, last, one housekeeping
24 matter. To the extent that the Debtors are going to use
25 demonstratives with any of their exhibits, do you want those

1 filed 5 p.m. the docket the day before or just use them in
2 Court?

3 THE COURT: I would like them filed before, for
4 this reason. Obviously, we start the evidence tomorrow.
5 The public and the media are not permitted under new
6 guidance from the Administrative Office of the Courts,
7 they're not permitted -- they're only permitted to be in the
8 courtroom or we have an overflow room if we need it, but
9 there are parties in interest who are appearing remotely and
10 so that we don't have any delays. If you're going to use
11 demonstratives, post them the night before so that anybody
12 who wants access to it can see that.

13 Demonstratives typically are not introduced in
14 evidence. They are -- they're illustrative for purposes of
15 testimony and used for that purpose, but it would be helpful
16 if demonstratives are filed the -- you know, by five o'clock
17 the day before they're going to be used.

18 MR. McCARRICK: Yes, Your Honor.

19 THE COURT: Okay? All right. So does anybody
20 else have any other issues either about exhibits or anything
21 else in terms of our procedures that we're going to be
22 following during the trial? Mr. McCarrick, shouldn't have
23 sat down so quickly.

24 MR. McCARRICK: I know. For folks who are
25 appearing virtually who may cross examine using exhibits, I

1 guess I seek the Court's guidance on how that should be
2 handled because the witness may not have a copy. As far as
3 I can tell, there's been no exhibit list disclosed by anyone
4 other than the Committee and the Debtors. That's just the
5 one practical question I have.

6 THE COURT: That's true. I would say this. If
7 anyone who is appearing remotely, any party in interest
8 appearing remotely, who wishes to cross examine any of the
9 witnesses and wishes to use exhibits that are not already
10 marked, they should also post them on the docket by 5 p.m.
11 the day before a witness is testifying. Okay. So there
12 often is an exception for impeachment exhibits, but we're
13 not -- because we're doing this with remote access and --
14 look, I've appreciated, you know, at one point early in this
15 case, we had 786 people on Zoom.

16 And what it is demonstrated to me, is it has
17 really helped with the transparency of the bankruptcy
18 proceeding. If there are people on Zoom who are going to
19 cross examine witnesses, they'll have to, you know, use the
20 raise hand function to be recognized to do that. Obviously,
21 cross examination needs to be limited to the scope of the
22 direct examination that's occurred, but I want to be -- give
23 some leeway to people, particularly nonlawyers in their
24 examination. I certainly reserve the right either to
25 sustain objections that are made or myself limit the cross

1 examination that can be done.

2 But it's a new world with us trying to do --
3 particularly in a case like this where there are so many
4 creditors who are not in the New York metropolitan area who
5 want to appear, and if they wish to cross examine. So, yes,
6 I'm directing that if you're going to appear and cross
7 examine remotely, if you intend to use any exhibits, you're
8 going to need to post them as proposed cross examination
9 exhibits by 5 p.m. the day before a witness testifies, which
10 necessarily is going to require that the parties here who
11 are calling witnesses disclose the day before who the
12 witnesses are going to be for the next day.

13 MR. McCARRICK: Yes, Your Honor. Do you want us
14 to file that on the docket?

15 THE COURT: I think you should, because again,
16 we've got people appearing remotely.

17 MR. McCARRICK: Yes, Your Honor.

18 THE COURT: And I think in response to a question
19 for clarification that the Debtors had asked, if, rather
20 than having to recall witnesses during the opposition case,
21 you know, I'm not going to limit cross examination to the
22 scope of the direct, if someone was planning on calling
23 someone as part of their main case. There's no jury. We'll
24 do it. I want, to the fullest extent possible, that a
25 witness when they testify and they're done, they're done.

1 They don't have to come back. So, okay. Any other
2 questions, Mr. McCarrick?

3 MR. McCARRICK: I can't promise in between here
4 and there, but thank you.

5 THE COURT: Good exercise. Anybody else have any
6 other issues they want to raise about how we're going to be
7 proceeding? Mr. Koenig, who are we going to hear from
8 tomorrow? Well, I picked on you, Mr. Koenig, but if
9 somebody else -- if Mr. McCarrick wants to get up again, he
10 can.

11 MR. McCARRICK: This has been very special for me,
12 yes, Your Honor.

13 THE COURT: I'm sure.

14 MR. McCARRICK: We anticipate tomorrow calling Mr.
15 Ferraro, Mr. Kokinos, potentially Mr. Kielty, Mr. Cohen. I
16 would expect that would --

17 THE COURT: Okay.

18 MR. McCARRICK: -- likely be it. Those are at
19 least four.

20 THE COURT: So my expectation, we're going to
21 start at nine. We'll take a recess. We'll take one break
22 in the morning and then a lunch break and then we'll
23 continue probably until five o'clock is my expectation. My
24 pattern has been that if a witness is almost done for the
25 day, we'll go late. Okay, try -- so they don't have to come

1 back the next morning. Okay?

2 MR. McCARRICK: Thank you again, Your Honor.

3 THE COURT: Go ahead and sit down again, Mr.

4 McCarrick. Anybody have a question for Mr. McCarrick, if we
5 want him to come back. All right. I will see you all in
6 the morning, okay?

7 CLERK: Judge, there's two parties on Zoom that
8 are -- have their hand up.

9 THE COURT: Okay, I didn't see that. Okay.

10 CLERK: Yeah.

11 THE COURT: Yes?

12 MR. KIRSANOV: Good afternoon, Your Honor.

13 Dimitry Kirsanov, pro se creditor. I was not listed on the
14 objections and I have concerns that involve best interest
15 and adverse amendments to the plan after the vote, ballot
16 valuation issues, and continued lack of clarity regarding
17 CEL valuation and custody in Hawaii. I was wondering if I
18 could be heard today.

19 THE COURT: Not in an opening statement. I made
20 clear that the opening statements request had to be filed by
21 the deadlines that I gave. I've heard everyone. I
22 respected the time request that everyone had made. I'm not
23 going to reopen -- this doesn't preclude you -- let me make
24 clear. This does not preclude you from examining witnesses
25 on these issues. The only thing that I did was fix a

1 specific date and time as a deadline for requests for
2 opening statements.

3 So it doesn't preclude you from raising this issue
4 during the trial, cross examining where appropriate, but no
5 more opening statements today.

6 MR. KIRSANOV: Thank you, Your Honor.

7 THE COURT: Okay. Anybody else wish to be heard
8 on Zoom?

9 CLERK: I don't see any additional hands, Judge.

10 THE COURT: Okay. Thank you very much. I'll see
11 everybody in the morning.

12 (Whereupon these proceedings were concluded at
13 4:23 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: October 3, 2023

[& - 555]

Page 1

&	1129 36:25	22-10964 1:3	3630 16:23
& 3:10 6:1,16	37:7 88:9	22nd 6:4	3631 63:24
16:9 34:16	1145 45:20	23,000 70:11	3635 2:9 94:5
37:3,22 38:16	11501 102:23	70:12	3644 2:8 94:1
67:21 88:23	11th 86:6 87:9	230,000 18:4	3653 37:6
93:25	12 86:6	245 4:17	380,000 35:14
0	12151 102:7	25 51:14 54:3,5	3:50 80:6
09002 5:23	12th 39:16	26 18:5 34:17	4
1	1301 6:18	2700 3:20	4 17:2 34:24
1,000 18:23	13th 39:23	27th 40:5	65:1 86:5
59:5	14 34:25 38:10	284 5:10	40 80:5
1,700 36:11,12	63:10,18	29 37:13 63:14	400,000 32:6
1.2 31:9 40:4	15 27:5 38:10	2:13 1:17	4000 5:3
10 34:24 35:19	150 33:21	3	42nd 5:15
46:5,6	151 5:15	3 35:24 80:5	4430 7:3
100 32:19	15th 86:13	86:5 102:25	450 31:2 84:25
55:24 69:7	17 34:25	30,000 36:12	47 54:2,5
10003 5:16	18,000 70:14	300 3:5 102:22	48075 5:4
10004 1:14 4:4	1800 5:3	3020 63:10	4:23 101:13
10010 6:5	2	31 79:14,15	5
10022 3:13	2 1:16 31:25	330 102:21	5 34:24 35:18
4:11	34:24 41:12	34 18:4 53:22	35:24 96:1
10110 6:12	2.5 67:2	53:25 54:2,5	97:10 98:9
10167 4:18	2.55 35:25	341 59:5,7	5,000 81:19
10ks 47:11	2.6 32:17	3478 86:5	5,160 81:23
10qs 47:11	2.7 53:10	35 35:20	50 26:5
11 16:12 17:5	2.8 48:22	3529 89:7	500 6:11
17:14 20:16	20 35:16	3542 80:22	51 6:4
24:7 28:15	20004 6:19	3560 34:20	510 53:16
31:16 38:12,13	2022 17:2	3574 34:21	78:22
39:23 41:21	39:16,23	3581 36:21	515 36:9
45:1,7 52:22	2023 1:16	3582 37:5	53 94:13
80:16 81:6	22:25 67:14	3586 37:21	53092 7:4
87:13 91:14	79:15 86:6	3588 37:25	55 94:14
1125 61:3	102:25	3591 37:15	555 3:20
	21 40:17	3592 37:11	

[56 - actually]

Page 2

56 94:16	9	acceptance	73:5,13,16
565 31:5	9 5:22 35:1	65:24	74:10 76:12
590 4:10	90071 3:21	accepted 16:13	78:5
599 61:7	9019 2:4	28:17 34:23	accounts 22:7
6	94040 5:11	51:18 58:6,13	49:23 52:11,13
6 35:18	96 28:18	72:12	52:19 53:6
60 46:5	98 28:18 77:5	access 17:20	accurate 54:21
600 30:20	99 58:6	40:11 45:10	56:22 102:4
600,000 40:8	a	49:16 96:12	achievable
601 3:12	aaron 3:23	97:13	67:11 69:23
60654 3:6	38:15	accomplished	achieve 28:20
62 94:19	ability 41:15	65:23	achieved 66:4
65 35:21 54:3	50:9 88:12	account 4:9 5:2	70:9
67 54:4,4	90:16	49:21 50:15	acknowledge
6a 34:24	able 18:18,18	52:21 64:12	31:16
7	21:15,17,19	73:24	act 47:23 81:2
7 30:25 32:18	24:3 26:23	accountable	acted 41:7
34:24 48:13,16	43:3 57:6	46:25 47:10	43:19
52:4 72:12	71:21 83:16	accountholder	action 20:14,18
82:15 83:9,13	87:4 91:21	41:10	25:3 61:24
85:7,7,11,13	abreu 7:7	accountholders	66:17 73:1
85:14 87:22,25	absolute 29:21	16:13,17,20	89:5
88:9	29:22 30:5,14	17:19 19:23	actions 56:1
717 61:7	30:16 92:14	21:1,12 22:7,8	62:1,9,11 64:4
786 97:15	absolutely	23:3,9,17,24	91:2
8	75:15 95:22	24:6 25:7 26:3	active 22:8
8 34:25	abused 81:14	26:6 29:6	59:4 66:24
80 23:11 83:6	academically	31:18,20 32:8	67:8
80,000 35:15	23:5	32:13 34:8,23	actively 17:10
35:23 36:5	accept 32:14	39:19 40:10,23	59:9
85 83:7	34:25 48:22	41:2 42:12	activity 59:21
87,000 48:21	51:17,18 67:3	44:3,25 48:22	actors 41:8
88 85:1	81:20	49:11,22 50:22	acts 61:22
8ks 47:11	acceptable	50:23 52:22	actually 22:3
	69:12	58:7,13,14	31:1,9 70:18
		64:16 71:18	74:3 87:22
		72:9,13,16	

<p>ad 4:9,16 5:2 16:16 23:1 26:10,13,16 28:21 61:19 62:21 64:12,15 65:10,13,15,21 66:7,12,16 67:19,21 71:14 71:16,19 72:3 72:13,18,21 74:14 75:6,9 75:18,22 add 72:24 76:15 added 62:5 addition 36:8 36:17 79:17 additional 24:15,16,19 26:9 28:19 63:8 79:8 101:9 additionally 63:25 address 37:1 89:25 94:11 95:7,7 addressed 49:2 69:24 70:7 adequately 84:18 adjacently 30:11 adjustment 94:13 adjustments 27:15 94:15,17</p>	<p>94:19 adler 4:20 67:20,21 70:11 71:6,7 administrative 96:6 administrator 20:14,25 32:22 62:14,17 73:4 73:18,21 admission 54:9 55:17,18 admitted 55:7 55:8 56:11 admittedly 67:4 adr 74:14,15 75:2,10 89:4 89:12,16,17,23 90:15 91:12,15 91:18 advance 65:12 advanced 23:21 advantage 29:9 42:25 44:22 adversary 19:9 adverse 100:15 advertised 49:25 54:24 advertisers 41:23 aegean 61:6 62:4 afework 7:8</p>	<p>affect 56:1 affected 54:22 56:2 affirmative 86:2 87:18 affirmatively 30:1 87:6 afternoon 16:3 16:4 27:8 34:15 38:15 58:23 64:14 67:20 71:15 77:21 80:12 88:20 100:12 agencies 17:10 18:9 59:22,23 agenda 63:14 67:17 agent 74:2 agents 32:5 73:7 ago 27:10 agree 52:17 61:9 76:2 85:3 92:2 95:9 agreed 19:25 20:5,13 26:4 27:21 29:8 60:9 72:24 73:20 89:20 agreement 19:3 26:12 55:9 66:16 78:7,20 93:20 95:3 agreements 18:12 26:16</p>	<p>32:1 62:3 ahead 30:8 39:5,15 40:24 88:21 93:21 100:3 airline 49:14 aizpuru 7:9 akin 52:20 alex 11:24 13:8 aligned 44:4 alive 68:15 allege 62:20 alleged 17:11 allison 37:20 allocation 92:7 allocations 92:8 allotted 39:1 allow 20:24 46:13 74:5 allowed 21:19 22:20 73:16,25 78:4 allowing 72:9 alluded 73:12 alongside 26:6 44:3 alternative 22:9 23:21 alvarez 37:3,22 ambiguous 71:24 amended 2:6 34:20 78:24 93:22 94:1 amendments 26:12 100:15</p>
---	--	--	---

amount 21:6 28:18,23,24 29:2 32:19 34:24 43:6 48:22 49:15 51:8,12,19 54:25 55:24 58:14 63:16 69:8 74:6 amulic 7:10 amy 8:19 analogy 76:25 analysis 30:22 54:2 83:1,13 87:21 andrea 7:10 andrew 7:24 12:24 14:8 angeles 3:21 annemarie 12:18 announce 20:9 announced 26:8 answer 21:12 47:3 64:8 78:19 87:15 anticipate 99:14 anticipated 45:19 anybody 17:14 87:10 92:10 96:11,19 99:5 100:4 101:7 anymore 71:21	anyone's 48:23 apap 5:6 10:23 71:15 75:15 apparently 70:20 appeals 72:2 appear 98:5,6 appeared 17:17 73:3 appearing 96:9 96:25 97:7,8 98:16 applicability 23:2 applicable 2:4 44:11 applied 54:18 63:19 88:4 apply 33:2,3 89:5 91:12 applying 55:22 appoint 17:17 appointed 17:24 40:5 48:17 66:13 78:2 appointment 18:1,2 63:23 appreciate 59:2 66:21 71:10,13 74:10 82:9 86:16 88:25 91:23 92:8,23 appreciated 74:7 92:9 97:14	appreciates 72:13,18 appreciation 65:7 73:17 appreciative 60:13 approach 44:10,18 45:5 74:11 appropriate 85:10,12 88:3 101:4 appropriately 62:9 approval 26:13 46:16 47:2 75:10 89:4 90:19 approvals 45:22,23 46:9 46:10 approve 46:3 75:4 90:13,15 90:16 approved 30:4 30:6 46:5 57:7 79:5 91:14,18 approving 78:3,19 approximately 35:14,15,19,24 70:15,16 aptly 82:17 archer 14:17 arduous 64:17 area 98:4	areas 25:15 argue 30:22 31:1 77:17 81:1,17,22 91:23 argued 30:7 50:14 arguing 22:8 28:3 argument 30:25 38:5 83:11 92:20 arguments 91:16 arising 50:15 53:1 armand 7:11 arrived 83:18 84:15 artificially 55:14 artur 7:7 ascertain 87:11 aside 20:24 asked 19:19 56:24 57:5,14 70:25 78:18 88:23 98:19 assertions 88:11 assessed 93:7 assessments 94:23 asset 56:16 94:23
---	---	--	---

assets 24:25 25:2,8 28:7,8 30:20 31:5,9 38:3 41:3,5,10 41:15,16 42:10 45:14,18 46:14 48:5,18 50:18 51:11 52:21 59:13,15 71:25 72:6,9 83:17 84:25 88:4 assist 25:22 assistance 69:22 associated 64:4 assuming 91:6 assumption 55:22 assured 39:19 astounding 67:2 attempted 51:13 81:21 attendance 59:6 attorneys 3:4 3:11,18 4:2,9 4:16 5:2,14 6:2 6:10,17 attributable 55:11 auction 20:10 24:17,17,21 42:25 43:3,10 43:18 48:3 68:16	audio 77:10,10 77:11 81:17 89:22,24 90:12 90:15,17 audit 46:3 austin 12:20 australia 70:17 70:21 authorizing 2:7 available 64:8 avenue 3:12 4:10,17 6:4,11 6:18 avery 9:4 avoid 62:12 avoidance 73:1 89:5 91:2 avoiding 72:16 awaited 67:13 aware 73:11	68:14,24 69:7 73:13 77:23 80:10 87:17 99:1 100:1,5 backup 26:20 26:25 88:12 bad 41:8 68:12 68:18 76:18 baked 75:11 balance 28:22 28:24 40:17 51:14 ballot 36:3 70:2,3 100:15 ballots 35:15 35:20,21,23 bank 39:17 bankruptcy 1:1,12,23 2:4 16:19 19:15 21:4,24 22:4 22:23 26:23 31:19 33:1 34:7 41:19 44:18,20 45:21 50:11,19 52:24 53:9,9 58:16 61:25 62:1 64:22 65:24 80:16,22 82:4 83:15 92:22,23 97:17 bar 66:25 81:3 bare 88:11 barry 6:14 10:21 88:22	barse 7:12 based 50:8 56:18 58:8 84:8,19,20 basis 28:2 29:1 38:7 62:15,16 63:11 68:11 75:7 95:10 batshon 14:18 batting 38:21 bear 86:3 becin 7:13 becoming 73:15 began 40:17 59:4 beginning 19:9 39:14 42:1 80:17 behalf 20:15 23:24 34:16 35:9,10 36:19 38:16 52:25 53:5 65:13 67:21 71:16 77:25 82:12 93:25 behest 85:14 belabor 34:3 believe 26:2,21 28:2 33:15 46:12 47:18 48:9 62:4 63:14 75:20 76:3,6 78:24 80:18 81:15 84:12,14,17
	b b 1:21 23:13,16 24:2,7 29:22 29:25 30:7,19 35:11 46:12,12 53:16 78:22 b.r. 61:7 b101 94:15,17 b103 94:15,18 b14 94:15,17 b15 94:14 b16 94:15,17 b17 94:14 back 21:21 28:23 29:2 60:13 67:23		

<p>85:24 believed 57:21 believes 26:4 48:9 57:16 61:2 75:19 belonged 22:9 ben 8:24 14:21 benefit 21:1 26:3 44:5 48:1 59:11 73:17 benefiting 65:7 benefits 78:9 bernstein 7:14 best 21:7,8 29:17,21 30:21 32:15 37:8 43:4,12,12 47:18 48:4,9 51:25 53:14,23 67:10 75:20 76:4,7 81:2 82:13,23 85:5 85:6 88:7 100:14 better 29:3 77:4,14 78:7 92:18 93:17 bid 43:7,12 bidder 24:12 43:16,20 bidders 24:14 24:16 43:4 bidding 20:6 bids 24:15 big 70:1 biggest 69:13 70:17</p>	<p>billion 31:9,25 35:24,25,25 40:4 41:12 48:23 53:10 56:12 67:2 binding 32:14 72:25 74:21 biswas 14:19 bit 35:16 36:10 39:7 41:25 68:1 75:3 76:15 77:3 89:21 bitcoin 25:15 25:17,18 41:12 44:8 51:4,5 65:5 69:8 70:12 blockfi 35:19 board 17:7,24 46:25 47:10,13 47:17,21,23,25 66:11 body 59:4 bonus 81:4 bonuses 33:2 76:14 77:8 borrow 26:10 26:14,17 28:5 borrower 28:21 29:16 66:2,3 70:2,19 70:22 78:23 79:6 borrower's 29:15</p>	<p>borrowers 4:16 27:25 28:1,9,10,15 28:18 29:9,19 67:19,22 68:2 68:10,13,19,22 68:24 69:4,7,9 69:11,12,15 70:5,10,12,25 bound 63:4 bowling 1:13 4:3 box 36:4 bradley 9:7,14 bread 77:3,4,5 77:6,14 break 99:21,22 brendan 6:10 brett 65:14 breuder 7:15 brian 10:14 11:7,18 34:19 bric 61:20 brief 27:13 33:19,19,21 34:2 37:1 38:5 45:21 77:20 briefly 26:18 27:23 brier 7:16 brifkani 7:17 bring 20:18,21 43:4 brings 27:3 broad 20:11 61:22 62:13 76:20 81:16</p>	<p>broader 61:11 bronge 7:18 brought 91:3 brown 7:19,20 bruh 7:21 bryan 14:9 bucket 72:9 build 26:9 building 19:15 19:22 22:24 38:10 42:12 43:23 65:18 67:1 burden 82:18 82:21 burgos 5:23 burks 13:16 business 17:11 17:19 18:9 21:23 22:22 24:24,25 25:1 25:8,22 26:4,5 31:3 37:19 40:18 42:18,19 43:10 44:6 50:4 55:1 businesses 25:4 button 31:17</p>
			<p>c</p>
			<p>c 3:1 7:16 15:5 16:1 102:1,1 ca 3:21 5:11 caceres 7:23 calculation 72:22</p>

calculations 72:25 calendar 22:14 call 85:15 calle 5:22 called 87:23 calling 98:11 98:22 99:14 cameron 8:10 9:22 candid 47:3 candidly 94:7 cappella 39:12 carl 8:9 caroline 14:3 15:13 carolyn 9:21 carry 82:21 carter 67:21 carty 7:24 carveouts 41:20 carver 7:25 case 1:3 3:17 17:5,14 18:14 18:20 19:14 20:9 21:7 23:15 30:12,12 34:6 38:11,16 41:19 43:19 45:7 52:22 53:24 56:6 59:8,8,9,20 60:5 62:1,17 63:11 66:19,25 67:3,7 68:12 70:19 71:23	73:12 76:9,11 79:9,10 86:4 86:11 91:18 97:15 98:3,20 98:23 cases 17:2,15 18:14,23 19:4 19:8,9,17 20:3 20:16,19,21 21:20,22 22:15 22:19,20 23:25 25:12 26:19 35:17 38:13 39:23,24 42:2 45:1,6 48:4,11 48:24 53:9,10 53:16 58:12 59:2 61:23 63:20 71:17 84:9 91:13,14 93:10 cash 20:6 49:21 54:16 59:13 casillas 5:22 catherine 12:15 cause 50:4 causes 20:14 20:18 25:3 cbp 94:20 ceases 58:3 cede 34:8 cel 2:3 33:15 33:17 40:21 49:4,5,6,9,14 49:16,20,21,22	50:1,3,5,7,10 50:11,13,15,20 50:24 51:6,15 51:22 52:2,6 52:14 53:3,18 53:22 54:7,11 54:11,14,19,25 55:2,10,13,14 55:23,23,24 56:21,25 57:14 57:16,21 58:2 82:17 100:17 cells 94:7,13,15 94:17,20 95:5 celsius 1:7 16:9 17:10,21,21 18:21 22:22 24:23 25:1 28:6,8,12,13 32:4,5 39:17 39:19,22 41:3 41:23 43:13 45:11 49:20,24 50:2,4,9,9,25 51:2,5,10 52:10,20 54:8 54:8,10,22,24 55:3,7,8,12,22 55:25 56:2,3,9 56:18 58:1,3 68:4,10 71:20 cent 51:14 54:3 54:5 center 5:3 centerview 37:10 42:23	centralized 64:21 cents 53:22,25 54:1,2 ceo 22:1 43:25 57:20 81:6 certain 2:8 36:25 37:7 38:2 49:15 59:22 61:4 62:21 64:2 65:25 66:17 92:24 94:7 95:5 certainly 19:10 19:18 20:3 31:12 69:11 75:12 86:17,24 87:1 91:24 92:11 93:4 97:24 certified 102:3 chair 8:1 65:16 challenges 17:22 challenging 17:4 23:14 chance 57:10 81:16 92:15 chang 8:2 change 32:23 82:1,5 changes 74:9 74:24 chapter 16:12 17:5,14 20:16 28:15 30:25
--	---	--	---

<p>31:16 32:18 38:12,13 39:23 41:21 45:1,7 48:13,16 52:4 52:22 80:16,24 81:6 82:15 83:9,13 85:7,7 85:11,13,14 87:22,25 91:14 chase 11:17 check 19:7 36:4 65:23 chen 14:12,20 chicago 3:6 chief 36:22,22 36:23 37:16 38:11 choice 43:16 68:7 choosing 84:21 chose 77:6 chris 3:8 7:13 16:9 christopher 8:5 11:1 12:7 13:12 14:25 36:20 chubak 8:3 circular 50:5 circumstances 20:3 75:21 cirkel 8:4 claim 23:23 28:13 36:11,12 61:20 69:5,6 73:15,16 74:21 78:4 82:4</p>	<p>88:10 claimants 63:4 65:11 66:17 claims 20:14 20:18,24 21:1 23:20,23 28:11 29:4 30:23 35:24,25 40:9 41:17 44:16 50:13,14,17 51:11 53:1 65:4,25 66:2 67:3 72:15 73:25 78:5,22 91:1 93:3,7 claire 4:6 clarification 98:19 clarifications 27:15 60:23 clarified 74:20 clarify 82:3 clarifying 72:24 clarity 76:15 100:16 clarke 14:21 class 23:23 32:15 36:1,11 52:15 61:20 66:17 72:12 78:2,4,20 classes 32:13 34:24,25,25 35:7 81:20 claw 60:13</p>	<p>clear 28:5 29:25 40:12 48:11 49:19 51:17 89:2 94:8 100:20,24 cleared 24:8 clearly 53:24 clerk 16:7 38:19 39:6 100:7,10 101:9 clerks 92:25 click 39:14 client 82:20 85:25 86:25 87:5 client's 87:2 clients 21:15 43:11,14,15 44:19 47:18 clips 56:8 clock 31:24 close 48:19 54:12 74:4 closely 74:6 closing 58:12 80:24 cloud 41:1 cnl 23:18 24:4 coco 8:5 code 33:2 45:21 50:11,19 52:24 58:16 61:3 65:24 83:15 92:22 cofsky 8:6 cohen 6:9 37:24 88:23</p>	<p>99:15 cohesiveness 65:21 cohost 16:5,7 38:18 39:6,6 coin 94:13,14 94:16,19 coinbase 32:1 61:21 collaboratively 16:15 collateral 28:9 71:1 colleague 16:5 34:9 35:2 38:4 38:17 71:10 colodny 3:23 21:14 33:15,20 38:14,15,16,20 39:3,8,12,16 46:2,17,19,23 47:7 52:12,17 52:19 54:1 55:20 57:8 58:18,19 69:21 69:25 73:12 78:18 79:17 color 44:13 column 94:20 come 29:11 38:22 50:12 57:12,25 65:11 78:13 84:15 87:16 99:1,25 100:5 comes 86:10</p>
--	--	---	--

[comfortable - confirm]

Page 9

comfortable 44:25	72:14 74:17 86:23	competent 46:24 47:9	concerning 44:7 45:7 65:3
commencem... 16:10	committees 61:20 62:22	competitive 24:14,20 42:24	concerns 17:18 18:9 60:17
commented 91:5	common 65:12	43:3 44:21	63:22 65:9
comments 27:17 72:19 91:5 94:20	communicate 90:10	complained 29:22	68:2 100:14
commercially 73:21	communicati... 90:9	complaining 80:18	concessions 19:3,25
commitment 67:10	community 65:2,19	complaint 52:9 52:10	conclude 34:5 36:15 38:12
committee 3:18 16:16 17:24 18:6,25 19:5,8,10,12 19:23,25 20:2 20:6,8,17,21 20:23 21:4,5 21:10 23:21 38:17 40:5,15 42:2,16,24 43:18 47:15,16 48:9 51:13 59:19,24 63:22 64:1 65:16 66:13,16 67:6 69:20 72:4,19 72:24 73:20 74:20 75:22 79:21 89:8,11 89:16,19 95:1 95:8 97:4	compagna 37:3 53:20	complete 90:1	concluded 41:19 101:12
	companies 43:23	completed 26:15	concludes 64:7
	company 25:10 40:2,4,16 41:13 42:6 43:13 44:2,5,8 44:11,22 45:7 47:8,19 48:5 49:9,17 57:20 58:8,10 81:3 81:11	complex 23:14 56:14 67:7 72:5 76:11	conclusion 57:25 75:18 83:18
	company's 32:10 40:7,18 40:20 44:9	complexity 72:17	conclusionary 88:11
	comparator 85:4,5	compliance 44:11	condition 46:8
	compare 85:6	compliant 44:14	conditions 79:18,24
	compared 83:7 84:25	complicated 36:4	conduct 92:13
	comparison 35:17 85:9	component 79:7	conducted 18:4 40:15
committee's 20:25 33:16,19 44:10 50:20	compensation 31:17	compromise 44:23 72:7,15	confer 95:1
		concept 65:3	confidence 78:25
		concern 50:10 83:8	confident 46:19 79:19
		concerned 72:21 73:16	confidential 2:8
			confidentiality 93:20
			confirm 16:18 34:6 38:12

confirmable 78:25	38:10 42:13 65:18 67:1	contemplates 45:17	coordinating 32:2
confirmation 2:1 16:11,11 17:3 27:21 45:24 46:8 58:16 59:6 60:9,11,19 63:9,15 66:4 67:13 75:7 78:11 79:3,15 80:21 86:4,9 87:10 90:5,24	consent 19:11 20:5,8,11 consented 18:2 conservative 44:17 consider 54:7,8 70:7 86:18 consideration 62:16,18,23 consistent 29:15 consolidation 23:23 79:9 constantine 9:1 constituency 40:7 47:20 66:7 constituents 67:8 constraints 65:25 constructing 44:10 constructive 23:22 45:2 74:10 constructively 21:15,17 29:8 consult 44:13 consummated 41:11 contact 64:1 contacted 59:20	contestant 78:15 context 16:22 61:16 continue 33:6 36:13 50:9 75:12 79:20 90:10 91:24 99:23 continued 17:15 32:9 49:19 59:5 100:16 continuing 75:16 contract 41:22 contracts 73:8 contractual 23:20 81:11 contribute 25:21 contributions 24:22 33:8 control 41:10 converted 74:4 cook 8:7 cookbook 48:6 cooperate 29:12 69:1 cooperated 18:3 cooperating 21:24 90:3 cooperatively 42:17 43:11	copies 86:8 copy 16:24 97:2 cordry 8:8 cornell 4:6 58:22,24,25,25 60:3 61:14 64:11 corporate 40:19 correct 52:12 57:8 83:4,25 corroborate 55:16 cost 59:11 72:16 costly 19:20 cote 8:9 counsel 67:7 67:19 78:14,14 82:9 counter 41:23 89:20 counterparts 42:22 counting 18:24 country 25:2 25:18 102:21 couple 27:10 27:23 69:23 70:23 74:13 91:4 course 60:3 73:11 79:22

court 1:1,12 16:2,25 23:11 23:19 30:6 31:13 33:23,25 34:12,14 35:6 38:14 39:1,5 39:11,13,24 42:11 45:25 46:15,18,22 47:6 49:5 52:5 52:8,13,18 53:17,25 55:18 57:2 58:18,20 58:23 60:2,2 61:9,10,13,25 64:6,8,10,12 67:18 70:10 71:6,9 75:4,12 75:13,24 77:16 78:3 80:4,9,10 81:5 82:7 83:3 83:20,23 84:1 84:4,11 85:3 85:15,18,21 86:3,12,19,21 87:2,8,16 88:15,17,21,24 89:13 91:4 92:4 93:23 94:3,25 95:6 95:10,15,19,21 96:2,3,19 97:6 98:15,18 99:5 99:13,17,20 100:3,9,11,19 101:7,10	court's 22:16 97:1 courthouse 57:5 courtney 13:16 courtroom 58:24 66:21,22 67:23 94:11 96:8 courts 61:5 87:23 96:6 cover 40:19 78:11 92:15 covered 33:18 56:4 78:12 82:4 covering 33:16 covert 54:22 covid 67:24 craig 15:11 create 44:14 55:5 creates 92:22 creating 42:13 creditor 59:4 66:14,25 78:1 80:13 100:13 creditors 3:19 16:20 18:21,23 19:1,1,7 20:16 21:8 24:6 25:24 28:10 29:24 30:8 33:13 38:17 40:7 41:13,15 42:3 43:5,9 45:8,9,10	46:14 47:21,23 47:24 48:2,12 48:15 51:12,13 51:23,25 59:5 59:16,20 60:3 65:18 66:25 67:11,15 75:8 76:4,17 77:6 81:12,16,23 82:13,24 83:15 84:20 88:7 98:4 crews 8:10 crippled 40:2 critical 55:1 66:3 critically 23:13 cross 31:12 86:22,24 87:8 88:13 93:14 96:25 97:8,19 97:21,25 98:5 98:6,8,21 101:4 crusell 8:11 crypto 17:6 22:9 23:11 25:13 35:17 40:2 43:1 65:4 65:7,25 67:3 68:4,8 69:8,14 69:16,17,18 73:10,14,18 74:3,4,7 cryptocurren... 44:8	cryptocurrency 17:20 22:6 23:8 24:24 25:4,6,15 28:4 28:7,12,23 29:2 31:25 32:6 33:12 42:6 43:6,22 45:7 48:5,17 49:13 51:1 59:13 64:21,25 73:5,8,23 74:1 cull 70:14 culminating 67:2 culmination 16:14 48:20 cunha 7:22 currencies 69:9 currency 31:3 48:13 73:5,14 73:19 current 18:5 61:8 currently 45:17 64:5 76:7 curt 8:14 curtain 56:11 custody 22:11 22:15 23:1,4 26:17 32:4 71:21,23 100:17 customary 46:7
--	--	--	--

[customer - deficit]

Page 12

customer 54:25 55:24 64:25 78:1	day 40:1,13 46:5 71:11 96:1,17 97:11 98:9,11,12 99:25	debtor's 2:6 19:8	deceived 41:2
customers 23:19 64:17 76:19 78:22,23 79:12	days 17:15 19:14 26:11 36:17 38:6 43:15 59:4 60:24 63:10,18 68:21 78:8	debtors 2:7 3:4 3:11 6:17 19:6 19:22 20:20 22:7 23:20 26:16 31:4 32:20,21 33:19 34:16 35:14 36:22,22,23 37:23 38:2 40:6,9,14 41:13,15 42:10 42:17,24 43:2 43:8 44:16,20 45:3 46:13 48:4,9,14,17 49:8 51:24 52:1 53:5 59:13,18,19,24 60:16,24 61:7 62:5,15,20 63:3,8 66:16 67:6 69:1,20 71:21 72:3,14 72:18,22,24 73:20 75:22 76:8,11 78:14 79:10,20 82:1 82:14,16,18 83:1,18,25 84:6,9,24 85:13 86:22,25 87:20 88:9,13 93:25,25 95:9 95:24 97:4 98:19	december 22:5 22:14 79:15
cut 63:16 77:7			decentralized 64:20
d			decided 17:25 18:25
d 12:1 13:6 16:1	dc 6:19,19		decision 20:9 21:3 61:12 65:1
d'amico 13:25	de 5:20 80:12		decisions 20:9
dalhart 8:12	deadline 85:22 85:24 87:10,16 101:1		declaration 34:20 36:21 37:4,5,10,15 37:21,25 40:1 40:13 57:3,7,9 83:12 88:12
damage 53:1	deadlines 85:19,21,22 100:21		declarations 36:18
damn 40:23	deal 23:13 43:5 72:4 93:9		decreases 51:12
dan 10:13 11:3 13:17	dealing 94:22		dedicated 21:6 65:17
daniel 5:8 9:8	deals 91:1		dedication 21:10 67:5
danielle 14:2	dealt 30:10 53:9 93:16		deemed 35:2
darius 9:13	deanna 16:4		defendant 72:25
darschewski 8:13	death 77:4		defendants 89:5
data 56:19	deb 71:15		defending 92:21
date 32:7,21 39:21 53:22 54:9,23 56:18 57:1,15,18,22 57:24 65:4 66:1 74:5 79:16,19 87:4 90:23 101:1 102:25	debates 48:3		defenses 23:3
dave 11:15	deborah 5:6 10:23 14:13		defer 33:20 75:10
david 4:20 7:12 8:12 9:4 13:3,7,21 15:2 15:14 67:20	debt 52:20		deficit 40:4
	debtor 1:9 19:7 20:16 64:6 68:17 86:22 89:7 93:2,4,19		

definition 52:24	51:5 64:25	developments 22:13	directly 49:25
defrauded 31:18,20	deposits 49:12	develops 95:6	director 37:3
delay 19:21	depress 87:22	dewey 30:11	37:22 38:1
73:15 90:19	depressed 17:6	dialogue 45:2	directors 17:24
delayed 23:6	83:2,6,10	dias 8:16	46:25 47:10,14
delays 96:10	derivatives 56:14	diaz 8:17	47:19
deleted 56:8	describe 95:11	dietrich 15:4	disagree 84:6
delicate 51:14	deserted 77:2	differ 90:5	disagreed 21:18
deliver 67:10	designated 66:12	difference 32:18	disagreement 60:15
dell 8:14	designee 20:25	different 21:25	disarray 42:20
demonstrate 30:23 33:4	66:12	38:22 79:12	disclose 98:11
34:18 35:13	desire 21:12	80:2 91:8,16	disclosed 58:1
36:6 50:6	destructive 25:10	91:22	97:3
51:24 55:21	detail 34:3	differentiates 45:6	disclosure 60:10 74:16
demonstrated 25:14 34:22	detailed 48:7,8	differently 53:6	84:10,17 90:1
48:14 58:15	determine 53:23	difficult 17:16	90:6 95:17
97:16	determined 42:16 50:13	58:12 80:23,24	disclosures 58:5 59:14
demonstrates 36:2	determines 50:10	85:9	87:19
demonstratives 95:25 96:11,13	determining 54:13 65:1	difiore 8:15	disconnected 64:20
96:16	detriment 41:5	digital 49:7	discount 45:13
deny 75:7	devaluation 83:12	50:18	84:19 88:2
denying 50:20	devalue 85:12	diligently 60:17	discounted 49:10 84:7,8
department 4:1	develop 24:9	10:19 100:13	84:12
departments 59:23	developing 19:21 22:3,21	direct 56:25	discounts 88:3
dependent 47:4	25:22	76:2 85:22	discrete 29:20
deposited 17:20 28:4,13	development 23:7 51:16	86:7 97:22	discretion 73:4
29:2 49:14		98:22	discussed 52:5
		directed 93:13	59:12 75:4
		directing 98:6	discussion 89:19 95:13
		direction 17:23	
		81:19	

discussions 60:12 72:6 74:17 dislocated 56:15,20,21 dispersed 40:10 dispose 28:8 disposition 68:9,11,19 dispute 22:6,17 23:14 30:18 disputes 26:14 disputing 84:11 dissenting 51:22,23 dissipate 41:5 distinction 53:7 distribute 24:5 41:12 42:10 73:4,19 74:3 distributed 23:11 35:14 59:16 74:8 distributing 25:5 46:14 73:7 distribution 29:23 32:5 43:5 52:16 69:14 73:7,10 74:1,2,4 distributions 16:19 31:25 32:3,4,6 34:8	67:14 73:22 district 1:2 61:5 diverged 30:16 dixon 8:18 66:18 doc 2:8 docket 16:23 34:20,21 36:21 37:5,6,11,15 37:21,25 63:22 63:23 80:22 86:7,12 89:7 93:6,19 94:1,4 96:1 97:10 98:14 documents 18:4 20:11 80:20 93:12 doing 38:20 81:9 95:12 97:13 doj 55:10 dollar 28:18 45:16 dollarization 65:3,4,25 dollars 24:19 30:3 31:7 40:25 56:12 dominate 70:22 don 13:11 donahue 8:19 door 18:15 dow 8:20	dowdy 38:18 draws 17:14 drew 14:22 drive 3:5 5:10 19:3 43:4 driven 27:12 due 42:21 duffy 8:21 14:22 duties 33:9 duty 81:2 83:14 dzaran 8:22 e e 1:21,21 3:1,1 11:1 12:25 16:1,1 61:3 102:1 e101 94:16,18 e103 94:16,18 e14 94:15,18 e15 94:14 e16 94:16,18 e17 94:14 eades 8:24 earlier 20:22 30:2 57:2 69:1 91:5 early 17:4,15 18:14,20 19:14 22:25 97:14 earn 4:9 22:5,7 22:15,16 26:10 26:14,17 28:6 36:1 47:22 49:11,23 50:24 51:1 52:10,13	52:19,21 53:6 64:12,15,17 65:2,6,10,10 65:19 66:2,12 66:12,16,17 67:3 69:6 71:20 78:1,22 earned 41:3 easier 74:23 easily 18:22 33:4 81:13 easy 17:4 21:9 36:4 42:8,19 54:14 eat 77:3,5,6 ecf 86:5 eck 13:24 eckhardt 8:25 economically 29:5 57:23 economics 57:17 economides 9:1 ecro 1:25 educed 79:2 effect 72:22 effective 32:7 32:21 79:16,18 90:22 91:1 efficient 72:4 effort 21:7 38:24 efforts 21:7 25:20 32:10 33:10 50:4,8 60:13 61:5
---	--	---	--

[efforts - evidence]

Page 15

67:5 73:22 78:13 79:20 ehrler 9:2 eip 33:4,7 76:13 77:8 either 18:7 32:20 53:17 75:11 96:20 97:24 elect 36:13 49:11 elected 49:13 50:24 51:1,3,4 51:6,6 election 70:2,5 elements 55:1 elementus 56:13 eligible 50:23 elimelech 8:23 elizabeth 3:15 34:9,15 ellis 3:3,10 6:16 16:9 34:16 93:25 elvin 13:22 email 18:21 emails 18:23 66:23 75:17 emanuel 6:1 82:12 embedded 31:15 79:6 embodied 72:11 embrace 19:23	emerge 37:23 44:23 47:2 emergence 20:15 31:15 32:24 44:21 80:25 employees 18:5 41:22 55:4 76:21,23 81:1 81:9 empowered 83:15 enabling 67:1 enclosed 58:5 encouraged 73:10 endeavor 54:15 engage 18:25 engaged 18:8 60:11 61:24 engagement 17:25 18:17 59:3 67:1 engel 9:3 english 4:15 67:21 80:14,16 enhance 66:14 enhanced 72:8 ensure 39:3 41:8 44:18,24 46:23 47:8,21 47:25 59:17 ensuring 25:6 enter 66:15 entered 20:23 30:8,12 46:8	55:9 57:4 86:13 92:6 enterprise 55:6 entire 40:13 48:20 entities 24:5 62:7,10 entitle 61:25 entitled 30:19 55:18 entity 23:20 44:14 47:11 entrusting 41:2 entry 2:7 79:15 equal 20:8 equation 70:22 88:3 equity 25:23 29:23 41:14,22 44:4 45:10,18 45:23 50:7,7 50:12,12 52:6 52:7 53:4 equivalent 52:6 erik 11:23 especially 68:12 essentially 52:15 69:5 71:12 establish 79:1 established 18:21 establishing 86:4	estate 20:18 59:18 60:25 63:14 65:2 71:3 72:5,10 83:14 estate's 74:11 estates 41:1 estelle 8:11 esther 11:10 estimate 45:25 46:15,21 eth 69:8 70:13 ethereum 41:12 44:9 europe 70:21 eve 17:3 event 58:3 68:9 68:11 events 47:12 62:2 everybody 57:10 77:18 80:9 86:14 92:8 101:11 evidence 31:9 33:3,5 36:24 37:7,11,18,23 38:2 49:6 52:2 53:21 54:20 55:2,22 62:18 81:18 82:23 83:5 84:16 86:2,15,21 87:6,11,13,13 87:18 94:9 95:6 96:4,14
---	---	---	---

exactly 20:17 26:22 28:14 84:16 examination 31:12 88:13 93:15 97:21,22 97:24 98:1,8 98:21 examine 86:22 86:24 87:8 96:25 97:8,19 98:5,7 examiner 17:17 18:2 40:16 59:10,12 examiner's 22:17 examining 100:24 101:4 example 51:3 62:2,14,21 65:5 81:4 89:19 93:2,7 exceed 48:15 exceeded 55:23 excellent 25:12 excels 94:12 exception 63:19 97:12 excess 33:9 69:5 exchange 68:5 69:5 exchanged 75:17 excited 26:1 34:6	excluded 41:21 exclusivity 19:13 20:1 exculpated 61:1,17 62:9 62:11 exculpation 27:16 60:14,21 60:21,25 61:2 61:8,11 62:2 64:3 82:2 excused 92:11 executable 26:21 executive 31:17 33:2 36:22 37:16 executives 33:10 39:19 55:12 56:10 exemption 45:20 exercise 68:17 99:5 exhibit 94:6,13 94:14,16,19 97:3 exhibits 86:8 92:12 93:5,6 94:7 95:25 96:20,25 97:9 97:12 98:7,9 exist 49:19 existence 62:8 62:10 existing 81:11	exit 44:18 67:11 expect 60:24 86:8 90:9 94:9 99:16 expectation 87:12 99:20,23 expectations 48:23 expedited 63:12 expeditiously 75:18 expense 65:20 72:2 expensive 19:18 23:6 experience 25:15 26:19 43:22,23 56:19 experienced 47:19 expert 31:11 33:16 54:13 55:16 experts 85:25 87:9 explain 49:8 63:3 87:1 explained 42:7 explicit 41:20 exposure 72:23 expressed 83:13 extended 72:17 74:17	extension 20:1 extensively 59:12 extent 29:10,13 73:23 85:18 86:1 95:24 98:24 extra 24:21 extremely 56:21 68:11 ezra 13:25 f f 1:21 12:11 102:1 fabsik 14:23 fact 33:6 55:12 55:25 58:1 61:24 79:3 89:16 90:2 factors 36:25 37:8 84:8,19 facts 20:2 55:8 factual 38:7 62:15 fahey 9:4 fahrenheit 24:22 25:14,23 26:1,4,8 37:17 37:19 43:20,21 44:1,3 61:20 fail 63:7 failed 51:10 58:11 failure 82:3 fairly 42:10 faith 61:4 75:17 90:3
--	--	--	---

<p>far 33:8 48:15 48:23 55:4 76:10,16 97:2 farr 65:14 favor 48:21 55:22 federal 17:9 feel 73:13 fees 24:21 fell 50:8 ferraro 22:1 23:10 36:20 49:8,18,24 57:20 81:4 99:15 fervent 21:11 fiat 48:12 73:4 73:10,14,19,23 74:4,6 fiduciaries 61:1 fiduciary 19:6 81:2 83:14 fifth 6:11 fight 20:17 fighting 19:16 24:2 file 2:7 47:11 57:6,9 72:20 74:21 80:19 82:3 86:7 93:5 98:14 filed 16:23 17:2,5,16,19 27:6,15,20,25 33:21 34:19 35:17 36:12,18</p>	<p>36:21 37:4,4,5 37:11,15,21,25 38:5 39:23 63:23 74:14,22 80:17,21 89:3 89:7 90:4,5,8 94:1 96:1,3,16 100:20 filing 17:8 42:20,20 final 22:17 67:12 78:3,20 90:12 finalize 75:13 finalized 64:5 75:2 finally 37:24 74:13 79:11 94:18 finance 25:13 financial 36:23 42:21 43:24 44:1 54:17 56:4 financing 29:10,11 find 19:1 25:12 52:6 53:21 72:15 77:2 finding 53:17 69:2 findings 79:2 fine 39:5,20 53:7 56:10 87:8 95:12 finish 60:7 90:20</p>	<p>fired 18:7 firmly 41:8 first 19:12 20:1 21:23 27:25 36:20 40:1,13 42:5,12 44:6 44:11 52:5,23 53:15 54:16 56:9 59:4 60:25 65:21 67:22,24 78:17 80:14,25 89:11 fish 71:24 fit 28:8 five 47:23 88:24 96:16 99:23 fix 100:25 fixed 18:17 flag 46:7 flagged 45:21 flaherty 14:24 flailing 55:6 flannigan 9:5 flipping 22:13 floor 6:4 florence 9:5 flow 74:24 flowed 39:23 flower 3:20 flows 54:16 flynn 9:6 flywheel 50:5 focus 22:21 focused 25:11 folks 21:8 23:12 27:6</p>	<p>34:4 96:24 follow 61:6 88:25 following 56:18 60:6 68:16 96:22 force 63:12 89:17 90:16 forced 81:23 89:20,22 forces 55:11 foregoing 102:3 foreman 9:7 forget 17:4 forgive 80:15 form 46:5,6 70:2,4 73:25 formal 16:16 27:6 72:20 80:20 formation 65:10 former 18:5 20:24 31:21 41:22 61:8 forth 27:13 35:4 fortunate 36:5 forum 64:22 forward 17:25 19:4 21:20 22:21 37:19 48:10 67:12 76:4 87:19 95:9</p>
---	--	---	---

[fought - good]

Page 18

fought 19:18 21:2 found 25:14 30:15 58:6 72:4 95:15 foundation 42:13 founders 65:15 four 54:1 94:7 94:12 99:19 fowl 71:24 frame 88:24 framework 22:19 frank 8:1 frankel 14:13 frankly 22:18 29:1 33:9 48:18 fraud 17:13 64:18 fraudulent 23:22 frequently 92:20 fresh 44:20,21 friday 63:21 frishberg 5:8 9:8 75:25 76:1 77:16 front 90:12 frustrations 18:16 full 17:25 18:1 25:7 29:24 39:1 40:24 50:17	fullest 98:24 fully 18:3,18 18:25 33:22 75:11 function 46:3 97:20 functioned 49:14 fund 6:2,3 82:10 funds 39:20 40:11,23 fungible 49:6 further 41:5 60:23 88:12 95:5 furthermore 62:4 81:8 future 26:22 66:8,14 67:14	generally 25:13,16 63:1 93:14 generated 24:14,19 geoffrey 8:4 george 13:14 gergi 10:15 getting 16:21 21:21 73:13,17 76:19 87:17 gheorghe 9:13 giardiello 9:14 gilbert 9:15 give 29:11 38:19 39:13 57:10 63:10 73:3 97:22 given 18:13 22:7 43:13 48:24 59:13 68:25 86:25 giving 20:10 35:15 gk8 23:18 24:4 glad 86:2 glasser 9:16 glenn 1:22 glitch 77:10,10 77:11 81:17 89:22,24 90:12 90:15,17 go 27:3,4 29:14 32:3 37:19 39:3,5,12,15 50:9 88:21 91:1 93:21	95:9 99:25 100:3 goal 19:6 42:2 60:4 91:9 goals 65:12 goes 78:17 80:1 84:22 going 17:1 20:17 25:23 27:3,8 31:10 32:19,20 34:3 34:7,9,10,11 42:1 47:1 50:9 54:13 68:14 77:3,17 79:23 80:5 83:8 87:12 91:10 92:12,23 94:8 94:9 95:24 96:10,17,21 97:18 98:6,8 98:10,12,21 99:6,7,20 100:23 gold 9:17 gonzales 9:18 good 16:2,4 24:13 30:16,17 34:15 38:15 58:22,23 61:4 64:14 67:20 71:15 75:16 76:10 77:21 78:13 80:12 82:5 88:20 90:3 99:5 100:12
	g 16:1 gabriela 9:25 gain 26:13 galka 9:9 54:12 55:16,16,21 56:13,17,25 57:13 gallagher 9:10 gastelu 14:25 gates 44:15 gather 57:6 geary 9:11 gelfand 9:12 general 30:23 92:19		

[gordon - hoc]

Page 19

<p>gordon 9:19 gorrepati 15:1 gotten 87:5 governmental 16:17 17:10 18:8 grace 7:16 grades 25:9 grant 47:4 granted 61:11 great 72:2 greater 50:25 54:5 greatest 73:23 greatly 71:10 green 1:13 4:3 greg 10:12 gregory 12:11 groundwork 68:20 group 4:9,16 5:2 25:20 26:16 28:21 37:17 43:20,21 47:22 64:13,15 65:10,13,15 66:12,17 67:19 67:21 68:3,3 68:23 71:14,17 71:19 72:3,13 72:21 74:14 75:6,9,18 group's 65:24 groups 16:16 19:1 23:1 26:10,13 75:22</p>	<p>grow 50:4 growth 51:8 guess 21:9 39:12 93:17 95:19 97:1 guidance 96:6 97:1 guided 44:10 guiding 65:17 gundersen 9:20 gurland 9:21 guthrie 9:22</p>	<p>78:15 80:2 haqqani 9:23 hard 38:9 41:3 49:1 59:2 69:17 harrison 88:17 88:23 hawaii 100:17 hear 34:11 36:16 37:2 38:6 42:23 43:24 47:16 55:15 58:20 75:1 92:20 99:7 heard 47:20 48:11 60:10 66:20,22 67:8 76:16 79:11,17 92:5 93:18 100:18,21 101:7 hearing 2:1,1,3 2:3,6,6 16:11 33:25 37:6 51:21 56:24 59:6 60:10 63:21 74:16 82:9 86:5 90:2 92:13 93:9,18 hearings 17:18 18:14 82:8 92:23 heart 33:17 heavy 41:1 heidell 7:3</p>	<p>held 40:8 49:15 73:25 helen 3:15 help 32:24 helped 97:17 helpful 60:20 79:24 96:15 henry 12:4 hensley 9:25 heras 5:20 80:12 herrmann 10:1 65:15,16 hershey 10:2 higher 49:12 51:7 68:12 85:2 highest 43:12 43:12 historic 18:10 25:3 history 43:13 hitch 32:3 hittelman 10:3 hoc 4:9,16 5:2 16:16 23:1 26:10,13,16 28:21 61:19 62:22 64:12,15 65:10,13,15 66:7,12,16 67:19,21 71:14 71:16,19 72:3 72:13,18,21 74:14 75:6,9 75:18,22</p>
	<p>h 9:7 half 70:15,16 hall 68:22 halls 66:24 hamilton 5:1 hammer 91:25 hand 82:25 87:21 97:20 100:8 handled 92:12 97:2 hands 43:15 101:9 hanging 91:7 happen 20:22 85:7,11,12 happened 17:7 82:3 happens 53:8 95:17 happier 80:3 happy 29:7 68:14 75:21</p>		

<p>hoc's 65:21</p> <p>hoeinghaus 37:20</p> <p>hold 45:24</p> <p>holder 35:10</p> <p>holders 4:9 5:2 24:3 29:22,23 29:25 30:7,23 35:25 40:8 41:22 49:8 50:21 51:23 52:2 53:18 81:20</p> <p>holds 26:22 28:6</p> <p>hole 40:17</p> <p>holzhauer 10:4</p> <p>hon 1:22</p> <p>honest 21:11</p> <p>honor 16:4,9 16:24 17:18 18:16 19:19 20:19 28:25 30:1,10 33:22 34:4,15,18,22 35:5,12,22 36:2,8,15,18 37:2,9,14,20 37:24 38:4,15 38:21,25 41:11 42:14 46:2,7 47:1,16 51:22 52:17 53:19 55:15,21 57:8 58:6,7,22 59:1 61:6,15 63:20 63:25 64:14</p>	<p>66:21 67:16,20 68:2 69:19 70:11 71:1,2,7 71:15,17 73:11 76:1 77:15,22 80:3,13 82:6 82:11,17 83:4 83:19,22,25 84:22 85:24 86:1,10,17,25 87:7,14 88:20 90:14 92:2 93:22 94:8,22 95:14,18 96:18 98:13,17 99:12 100:2,12 101:6</p> <p>honor's 18:20</p> <p>hope 26:23 60:18 64:5 80:1 88:25</p> <p>hopefully 38:12 67:14 77:24 79:13 90:10</p> <p>horse 20:10 24:12 43:7</p> <p>hot 31:17</p> <p>hours 69:3</p> <p>housekeeping 95:23</p> <p>howey 52:11</p> <p>huge 36:13</p> <p>hundreds 24:19 31:6</p> <p>hurley 10:5</p> <p>hussam 14:18</p>	<p>hybrid 2:1,3,6</p> <p>hyde 2:25 102:3,8</p> <p>hypothecate 28:8</p> <p>hypothetical 85:7</p> <p>i</p> <p>idea 74:5 93:17</p> <p>ideas 44:15</p> <p>identical 91:12</p> <p>identified 41:24 47:22 62:9,17 84:9 84:19</p> <p>identify 29:10 43:11 56:15 93:23</p> <p>identifying 69:3</p> <p>ignat 5:14 77:25</p> <p>il 3:6</p> <p>illiquid 24:25 25:2,7 38:3 45:12,18 48:18 58:2</p> <p>illustrative 94:20 96:14</p> <p>ilusion 12:21</p> <p>imagine 77:1</p> <p>immanuel 10:1 65:14</p> <p>impeachment 97:12</p> <p>implemented 89:4</p>	<p>importance 43:14 44:19 66:8</p> <p>important 16:23 26:20 28:25 30:9 36:8 53:8 62:21 71:13 74:9</p> <p>importantly 18:24 20:13 28:21 41:16 73:2 78:17 79:11</p> <p>imposed 51:23</p> <p>impressive 35:22</p> <p>improve 77:13</p> <p>inappropriate 28:3</p> <p>incentive 31:15 32:12,25 37:23 80:25</p> <p>incentives 44:4</p> <p>incentivize 33:11</p> <p>include 41:22 60:17 77:7</p> <p>included 32:11</p> <p>includes 41:20 63:9</p> <p>including 23:18 40:7,16 43:5 55:12 61:11 67:5 71:18 75:8 76:13 79:6</p>
---	---	---	---

[including - issued]

Page 21

84:9 93:14 inclusion 62:16 incomplete 90:19 incorporate 27:16 increase 44:4 50:5 57:23 incredibly 53:8 independent 17:23 40:15 51:5 indicated 69:1 91:24 indication 54:21 56:23 indicator 54:19 indiscernible 57:12 76:10,21 76:22 77:1 81:13 89:8,12 89:18,23 individual 16:17 18:25 65:20 individuals 31:14 36:5,11 59:21 68:3 industry 17:6 43:22 inequitable 50:22 inevitable 65:6 inflate 55:5 informal 27:6 72:19	information 2:8 40:14 41:7 63:8 74:24 94:6 inherent 84:6 initial 19:11 32:11 94:2 initially 48:2 inordinate 21:6 inside 44:13 53:4 insider 81:1 insiders 20:24 31:21 insisted 19:11 89:12 insistence 89:21 insolvent 54:9 56:12 instance 61:18 instances 44:17 60:15 73:15 institutions 43:24 instruments 45:15 insufficient 82:23 87:20 intellectual 25:21 intend 83:17 86:24 98:7 intended 63:10	intense 66:9 intensive 47:15 48:7 68:21 intentional 21:3 intercompany 23:22 intercreditor 26:14 interest 29:17 29:21 30:21 35:10 37:8 43:1 49:10 51:4,9 53:4,14 53:23 60:4 68:5,6,6 81:3 82:13,24 85:5 85:6 86:6 88:7 95:16 96:9 97:7 100:14 interested 48:12 87:2 interesting 23:5 interests 32:15 40:6 51:25 65:20 interim 22:1 36:22 60:11 internally 93:6 international 70:16,17 intersection 64:19 interview 47:15	interviews 18:4 intrinsic 56:17 introduced 96:13 introducing 36:16 invest 26:5 invested 40:3 investigating 17:10 investigation 18:3 investigations 21:25 40:15 investment 44:2 investments 25:4 45:11,11 investor 49:25 investors 23:13 invited 20:7 involve 100:14 involved 24:10 involves 93:11 iovine 10:6 island 77:2 issue 19:20 20:17 28:5 30:6,9,11 31:17 33:18 50:19 57:25 69:13,24 70:1 90:22 93:10 94:10 101:3 issued 49:8
--	--	--	--

issues 17:13 18:19 21:18 22:2,18,24 29:20 32:24 40:16 42:9,11 42:15,21 59:3 60:18 63:18 67:9 68:23 69:23 70:6,8 70:23 71:5,12 90:11 91:7,8 91:11,13,15,25 92:11,15 96:20 99:6 100:16,25 item 52:23 items 22:18 37:1 80:25 81:12 89:6 90:7	jean 11:4 jeff 12:10 77:25 jeffrey 5:18 7:14 8:3 13:20 jellestad 10:9 jeremy 16:5 jesse 11:13 joanne 9:12 job 33:9 76:10 joe 11:6 12:23 joel 37:24 johan 7:18 john 8:22 12:9 12:17 johnson 10:10 10:11 join 75:21 joinders 80:17 joined 81:24 jonathan 1:25 12:22 15:10 jones 3:15 34:9 34:14,15,16 35:9 joseph 11:2 12:25 joshua 14:4 journey 58:13 joyce 4:13 64:14 judge 1:23 26:11 65:22 71:11 78:8 100:7 101:9 judges 61:10 61:12	judicial 22:10 63:13 judson 7:19 july 17:2 26:10 39:23 40:5 65:22 67:25 june 39:16 67:24 junior 35:6 jurisdictions 70:18 jury 98:23 justice 4:1 justification 83:5	kaz 15:3 kaza 10:16 keeney 10:17 keep 38:24 93:12 keeping 66:8 keith 11:20 12:5 14:7 ken 9:2 kenneth 8:13 kept 22:23 68:15 kessler 10:18 kevin 8:6 11:16 key 20:7,8 21:18 22:2,15 22:18 23:2 25:15 27:24 khai 12:12 kielty 37:9 42:23 48:8 99:15 kind 44:6 51:1 71:19,24 kirkland 3:3 3:10 6:16 16:9 34:16 93:25 kirsanov 7:1 10:19 100:12 100:13 101:6 klein 10:20 kleinberg 6:9 88:22 kleiner 6:14 10:21 75:2 88:18,19,21,22 88:22 89:15
j			
j 4:20 8:5,9,12 9:17 15:8,15 jacobs 10:7 james 9:3,16 15:8 jamie 9:15 janelle 8:25 january 22:14 65:1 jaoude 10:8 jarno 12:6 jasleigh 9:11 jasmine 7:11 jason 10:6 11:12 12:2 javier 13:2			
	k	k55 94:21 k57 94:21 kaczkowski 10:12 kahn 15:2 kaila 14:10 kaitlyn 10:3 kaplan 6:9 10:13 88:23 karen 8:8 15:7 karpuk 10:14 36:17 karpuk's 34:19 kass 10:15 katherine 7:9 10:10 13:13 kathryn 9:20 10:24 katie 14:5 kaufmann 14:14	

<p>92:2 knauth 15:4 knew 39:21 56:6 86:14 know 20:19 21:8 26:22 31:16 34:4 36:3 38:21 46:20 53:7 57:3 70:21 76:11 77:4 86:13,19 87:9 88:5 89:8 91:15,20 95:7 96:16,24 97:14 97:19 98:21 knowingly 50:25 knows 61:6 68:2 71:17 77:18 koch 15:5 koenig 3:8 16:3 16:4,8,9 17:1 33:24 34:2,13 35:2 38:4,21 42:7 45:1 49:2 68:25 69:21,25 79:23 99:7,8 kohli 10:22 kokinos 37:14 43:25 99:15 kovsky 5:6 10:23 71:14,15 71:16 75:15,24 89:18,25</p>	<p>kuethman 10:24 kuhns 4:13 64:14,15 kurman 4:8 64:15 kurmar 11:15 kwasteniet 10:25 69:21 kyle 10:4</p> <p>I</p> <p>I 8:14 13:24 14:23 la 3:5 lack 18:16 45:4 100:16 lackey 11:1 lacks 54:16 lafayette 8:7 laid 89:6 lalana 12:16 lalia 11:2 land 71:19 language 27:21 60:1 64:3,4 72:24 73:20,24 80:14 large 19:2 38:5 43:24 63:15 91:14,18 largely 33:15 larger 65:19 66:7 largest 25:1,17 40:6 70:18,19 las 5:20 80:12</p>	<p>lasted 24:17 lastly 63:9 66:15 82:1 late 26:9 99:25 latona 11:3 latreille 11:4 law 60:6 layla 11:25 layne 11:5 lead 25:20 89:1 learning 41:7 leave 91:7 leboeuf 30:11 lectern 34:8 led 19:20 45:3 55:25 65:6,9 66:1,2,9 ledanski 2:25 102:3,8 ledger 27:11 leeway 97:23 left 53:13 legal 19:20 22:2 23:20 24:5 28:6 29:16 42:9 62:16 64:24 102:20 legge 15:6 lehrfeld 11:6 leigh 12:3 lender 29:11 29:13 lenders 69:17 69:18 79:9 lending 69:2</p>	<p>lennon 11:7 leon 40:22 41:18 leonard 11:8,9 leonie 15:5 letter 46:4,4 47:5 60:6 letters 28:1 leung 15:7 leverage 43:3 levine 11:10 lexington 3:12 liability 61:4 license 17:13 lied 50:21 56:3 lies 56:5 light 17:21 22:18 79:13 liked 24:18 likely 85:9 99:18 limit 71:2 97:25 98:21 limitation 60:21 61:3 limited 27:20 61:18,22 62:3 73:8 89:3 97:21 lindsay 11:11 line 42:8 60:7 lines 18:21 44:13 link 93:19 liquid 24:24 25:6 31:2,5 32:6 38:3 43:6</p>
--	--	---	---

69:14 73:22,25 liquidated 48:17 liquidating 45:14 liquidation 30:22,25 32:18 48:13 52:4 83:1,12 85:1,4 85:16 liquidity 25:24 45:9 68:8 list 25:23 27:7 33:14 94:6 97:3 listed 45:19,23 52:23 100:13 litigated 22:11 22:15 72:1 litigation 20:14 20:15,25 24:2 66:13,14 72:17 93:2 94:23 little 19:17,19 35:16 36:10 39:7 57:21 68:1 75:3 81:19 91:8,16 live 56:8 69:10 lives 80:24 llc 1:7 37:10 38:1 llp 3:3,10,17 4:15 5:1,13 6:1 6:16 loan 28:4,14,22 68:5,15	loans 49:10 68:24 locations 70:17 long 24:10,16 27:2 32:15 48:24 64:16 67:13 78:1 79:25 82:19 longer 20:4 24:17 42:4 54:11 look 48:6 54:2 54:3 56:9 67:12 92:16 97:14 looked 27:7 92:25 looking 27:9 47:6 los 3:21 lot 34:4 36:3 38:9 51:16 60:15 63:18 81:8 lots 48:3 71:11 loud 48:11 love 77:6 low 29:1 68:11 81:3 88:2 lower 24:21 46:12 49:16 loyalty 49:15 ltvs 69:16 lu 11:12 lucy 13:19 lunch 99:22	lund 11:13 lupu 11:14 m m 11:16 13:4 14:14 maciej 15:9 made 21:2 27:15 32:20,20 32:23 38:18,24 45:12 62:17 68:7 74:2 82:2 90:6 92:17 97:25 100:19 100:22 madison 4:10 6:4 main 98:23 major 42:6,22 44:7 47:11,16 67:9 majority 40:8 47:14 make 16:5,19 18:15 19:19 29:12,13 31:24 31:25 32:2,5 33:11 34:7 43:16 47:1 49:21 70:3,5 73:22 74:23,24 75:10 79:2 80:15 89:9 91:4 92:19 100:23 makes 53:17 making 19:2 19:24 30:25	44:1 71:4 malhotra 11:15 man's 71:19 managed 59:9 management 20:6 21:25 25:16 31:19,21 31:23 32:10 33:5,8 43:12 45:12 59:14 67:6 86:4 managing 25:15 37:3,22 37:25 43:23 mandatory 91:15,17,18 manipulate 55:13 manipulation 40:20 manner 54:17 manual 94:13 94:14,17,19 manus 11:16 march 24:11 40:17 68:14 marine 61:6 mark 7:21 11:8 11:11 12:19 47:16 marked 97:10 market 33:6,6 43:1 54:18,20 55:11 56:2,3 56:10,19,21,22
--	---	---	---

[marketing - misunderstandings]

marketing 24:10	93:24 94:4 95:14,18,20,23	meghji 11:22	miles 49:15
markets 56:15 56:16,20	96:18,22,24 98:13,17 99:2	melissa 13:24	milestones 66:3 79:14
marsal 37:3,22	99:3,9,11,14	member 37:16 47:16	milin 12:8
marsh 11:17	99:18 100:2,4	members 21:5 21:10 43:18,25	milligan 11:25
marshall 14:16	100:4	65:16 71:18	million 23:11 26:5 30:3,20
martin 1:22	mccarter 4:15	75:8	31:2,5 32:17
mashinsky 18:7 40:3,22	mccormack 11:20	membership 63:22	55:25 84:25
41:17 50:2	mean 52:4 69:24 70:8,21	mendelson 11:23	millions 24:19 31:6 40:25
52:9 55:12	means 25:5 29:16	mentioned 45:2 53:11,16	mind 76:3
mass 66:23	meant 19:2,22 19:24 26:15	76:16 79:8	mineola 102:23
master 6:2,3	measures 59:11	mequon 7:4	minimum 92:14
masumoto 11:18	mechanda 11:21	met 26:10 32:22 53:23	mining 23:18 24:4,25 25:1,8
material 78:11	mechanism 46:11	metaphorical 77:12,13	25:9,10,16,18
mathematical 88:7	media 21:9 66:23 80:19	methodically 42:11,15	25:19 31:3
matter 1:5 32:11 95:24	96:5	metrics 32:22 54:17 81:8	37:12 42:18,19
matters 59:22 78:11	mediated 28:20	metropolitan 98:4	44:8 48:18
matthew 9:17 10:20 13:9,10	mediation 26:11 65:22	mg 1:3	minor 70:7
13:23	66:1,4,6 68:20	mi 5:4	minute 16:22 39:13 52:9
max 9:9	68:21 69:3,13	michael 10:8 12:1 13:15,18	80:6
maximize 22:22 26:2,21	70:9 71:11	michaels 11:24	minutes 78:10 78:16 88:24
33:12 41:14	meet 53:14	mid 26:10	mira 9:23
45:14 83:14	meeting 59:5,7	middle 77:2	mirror 74:6
maximizing 24:9 25:5	meets 32:15 33:4 51:24	midpoint 31:4	misrepresent... 40:18,20
maximum 25:24	58:15	midst 17:6	misrepresented 56:4
mccarrick 6:21 11:19 93:22,24		mike 10:11 15:6	mistake 80:15
			misundersta... 64:23

[mitchell - noskov]

Page 26

mitchell 10:5 mix 66:22 model 17:11,19 18:9 50:6 55:1 modifications 74:18 modified 16:12 27:21 mohsin 11:22 mold 77:3,12 molody 77:3,7 77:13,14 moment 38:19 monetize 41:16 money 17:12 26:5,7 63:14 monroe 5:10 month 17:8 24:16 39:22 months 27:10 38:10 69:22 morning 57:5 58:22 99:22 100:1,6 101:11 morris 12:1 motion 2:6 17:16 19:13 63:13 92:17 94:1 motions 17:19 19:11 mountain 5:11 mouth 26:7 move 21:20 22:21 41:25 moved 22:20 60:5	moving 31:14 multiple 43:4 mutual 74:25 n n 3:1 16:1 102:1 nagi 12:2 65:13 name 78:16 93:3 named 24:11 24:15 44:2 63:1 names 27:10 nani 15:8 narrowed 94:5 nasdaq 25:24 45:19 nathaniel 11:5 nathanson 12:3 native 80:14 natural 19:5 navigate 51:13 navigated 42:11,15 navigating 64:19 nearing 60:7 nearly 27:14 40:8 41:12 necessarily 62:3 98:10 necessary 46:10 62:5,19 need 29:10 32:5 33:10 45:10,22 53:19	53:20 60:22 65:11 69:15,15 69:24 70:6 72:20 96:8 98:8 needed 21:23 42:9 54:25 78:12 needs 70:4 97:21 negotiate 75:16 negotiated 60:19 75:5 negotiating 32:1 60:15 74:11 negotiations 66:10 neither 71:24 network 1:7 61:7 never 52:25 53:11 54:20 65:18 70:20 new 1:2,14 3:13 4:4,11,18 5:16,16 6:5,5 6:12 21:25 22:1 31:23 41:13,14 43:13 44:2,5,11,22 47:8,19 50:19 64:24 66:25 67:6 69:2,3 96:5 98:2,4	newco 25:22 25:23 26:3,21 31:1,3,10 37:16 43:14,25 44:5 45:18 46:23 47:9,10 47:24 48:1 66:9,11,11 67:16 83:20,21 83:23 84:2,4 84:23 88:4 newco's 25:19 25:20 newly 17:23 newman 12:4 nice 58:23 nicholas 65:14 night 96:11 nine 56:14 99:21 noah 13:4 noel 11:9 non 55:9 70:7 noncontract 78:5 nonlawyers 97:23 noon 86:6 north 3:5 noskov 6:7 82:11,11 83:4 83:21,24 84:3 84:5,14 85:6 85:17,24 86:10 86:16,20,24 87:4,14,17 88:16
---	---	--	---

notable 27:8 notably 24:25 28:17 30:10 note 71:8 noted 35:2 38:4 51:22 82:17 89:18,25 notes 52:23,23 52:25 53:2,11 notice 63:23 70:4 78:9 novawulf 24:12 68:15 novel 42:9 67:9 72:5 noyes 12:5 64:3 number 27:25 28:19 34:24 36:25 54:15 numbers 93:13 numerical 81:13 numerous 23:21 24:15 76:8 nuraldeen 7:17 nw 6:18 ny 1:14 3:13 4:4,11,18 6:12 102:23	oath 86:7 oberg 12:6 object 18:1 80:23 objected 19:10 19:12 28:1 29:20 31:15 32:13 80:24 82:20 89:6 objecting 18:11 30:13 89:2,3 objection 31:8 45:4 72:20 80:22 82:6,13 89:9 90:8 objections 26:18 27:7,14 27:20,22 29:18 33:14,18 49:3 60:8 78:21 80:17 91:2 97:25 100:14 objectives 81:10 objectors 27:13 obligated 93:5 obligation 49:20,22 52:20 52:20 53:5 obligations 52:25 53:2,10 53:12 81:11 observer 66:11 obtained 22:16 46:11	obviated 72:20 obvious 81:6 obviously 29:5 70:23 88:6 90:24 96:4 97:20 occupied 41:9 occur 46:20 67:1 occurred 85:20 97:22 occurrences 62:2 october 1:16 79:14 81:5 86:6 87:9,13 102:25 odd 75:3 offer 26:2 71:21 86:8,21 87:12 89:20 offered 94:9 offering 49:17 51:14 offerings 17:12 office 59:1,3 96:6 officer 36:22 36:23,24 37:16 official 3:18 38:16 offit 4:8 64:15 okay 17:1 46:22 52:18 71:3,6,7 80:7 91:7 92:1,4,24 94:3 95:3,12	95:17,19 96:19 97:11 99:1,17 99:25 100:1,6 100:9,9 101:7 101:10 old 102:21 ombudsman 59:10 once 26:15 46:4 88:7 ones 27:24 31:20 95:16 onset 65:17 oona 8:11 open 90:7 opening 27:2 27:23 33:20 36:16 38:24 64:7 80:11 92:5 100:19,20 101:2,5 openings 77:19 92:6 openly 76:19 operate 31:3 58:4 operated 48:1 operating 21:24 operation 58:9 operations 25:19 44:7 operators 25:18 opinion 56:20 76:20,22
o			
o 1:21 16:1 102:1 o'clock 96:16 99:23			

opportunities 67:15 opportunity 45:19 57:13 66:20 88:25 opposition 77:19 85:23 86:9 87:10 98:20 opt 36:9,11,13 74:23 81:16,21 opted 44:17 option 28:22 29:9 48:8 51:7 68:25 75:21 76:7,18 77:8 options 84:21 orchestrated 40:19 55:13 order 2:7 19:3 27:22 57:4 63:9 69:16 78:3,19 79:15 86:3,13,17 92:6,7 95:5 ordered 30:2 orderly 26:19 83:8 84:23 85:4 87:23,24 orders 20:7 46:8 original 65:15 originally 73:3 outcome 21:8 29:3 67:10 outlining 34:10	outset 71:17 outside 25:9 66:22 overall 60:16 overbroad 60:22 overflow 96:8 overly 76:20 override 85:19 overruled 29:19 oversee 47:19 overseen 46:24 47:9,13 overseers 47:23 oversight 47:21 66:13 overwhelming 17:3 48:21 51:19 58:14 overwhelmin... 16:12 34:23 72:12 76:12 own 21:6,10 25:22 26:5 28:3,9 32:4 43:9 44:9 45:10 54:9 87:19 owned 22:6 64:24 ownership 22:12 49:7	p	66:24
		p 3:1,1 10:2,14 12:17 16:1 62:10 p.c. 6:9 p.m. 96:1 97:10 98:9 page 33:21 86:5 pages 56:9 pagnanelli 12:7 paid 29:24 33:5,6,7 50:17 55:24 68:5,6 painted 40:1 papers 35:4 paragraph 86:5 paramount 43:14 44:19 parity 65:18 park 4:17 part 24:23 30:25 32:12 43:8,10 55:9 56:14 61:19 78:7 79:7 88:5 98:23 participant 82:8 participate 30:1 90:18 participated 23:9,12 participation 36:3 61:5	particular 21:5 25:8 83:17 90:22 particularly 24:23 25:10 73:14 75:7 80:23 97:23 98:3 parties 16:17 27:7 36:9 41:21,23,24 59:2 60:4 61:17 62:13,21 62:23,24 63:10 63:12,17 74:25 86:6 89:17,20 90:3,9,19 95:2 96:9 98:10 100:7 partner 25:12 25:14 37:10 partners 30:13 37:10 42:24 parts 77:7,13 party 29:11 30:13 36:10 61:24,25 62:15 62:18,25 63:5 63:6 78:6 81:17,21 97:7 passed 85:25 past 93:16 patel 12:8 14:15 path 17:25 42:7 48:10

<p>66:3 76:4 pathway 72:4 72:7 patouhas 12:9 pattern 99:24 patton 12:10 paul 7:15 14:23 pause 17:7 39:18,21 49:19 50:22 57:24 58:1 64:17 paused 39:17 56:18 pay 23:8 49:9 54:25 55:5 68:24 payment 32:17 32:19 33:2 49:21 52:20,25 53:2,5,10,11 paypal 32:2 61:21 pending 60:9 pennies 45:15 pennsylvania 6:18 people 39:10 40:3 49:15 56:6,7,7 57:24 63:12 70:25 76:17 77:24 80:18,23 90:17 92:6 93:20 97:15,18,23 98:16</p>	<p>pepper 5:1 71:16 percent 28:18 28:18 35:16,18 35:19 54:2,3,4 54:4,6 58:6 69:7 77:5 83:7 perception 55:6 perfect 24:13 37:13 75:19 perform 62:11 performed 61:21 62:8 period 32:9 46:6 permission 57:2 permitted 81:22 96:5,7,7 perpetrated 64:18 perry 65:14 persistently 56:3 person 77:23 personal 21:6 perspective 38:23 69:10 persuade 91:21 pesce 12:11 peter 8:22 15:15 petition 53:22 54:9,23 57:1 57:14,18,22,24</p>	<p>65:4 66:1 petroleum 61:6 pham 12:12 phan 12:13 pharos 6:2,2,3 6:3 29:20 30:5 82:10,12 phase 22:20 25:11 philippe 11:4 philips 12:14 phone 18:21 phung 12:15 picked 99:8 picking 20:10 picture 40:1 pii 95:19,21 pillar 47:7 pivot 26:25 place 22:1 42:16 83:22,23 83:25 84:1,4 84:12 placed 43:14 83:20 84:13 plaintiff 66:18 plan 16:12,14 16:18 18:12,19 20:12 24:6 26:12,20,21,25 27:9,21 28:1,2 28:15 29:24 30:14,24 31:15 31:16 32:4,11 32:12,12,14,18 32:21,25 34:6 34:23 35:1,3,8</p>	<p>36:7 37:17,17 37:19,23 38:7 38:12 39:24 41:11,17,20,25 42:13 43:2,17 45:17 46:9,11 46:12,12 48:15 48:21 49:4 51:15,16,16,17 52:3 53:17 58:13 61:1,5 62:14,17 63:1 63:4,6,7 66:3 66:15 67:3 68:16 69:12,23 70:7,8,24 72:11,20,23 73:2,3,6,9,18 73:21 74:3 75:7,19,19 76:4,13,18,20 77:9,11,13,18 77:19 78:6,11 78:24 79:6,22 80:21 81:5,7 81:20 82:16,19 82:20,25 83:7 83:9 84:21 85:8,15,23 86:21 88:5 89:2,5 90:25 91:6,9 100:15 planning 98:22 platform 17:21 40:25 41:3 54:10 58:3,9 58:10 68:4</p>
--	--	--	---

71:20 playbook 17:14 played 62:21 pleadings 50:14 please 16:2,5 38:19 pleased 18:17 27:12 pleasure 16:10 67:22 77:23,23 pm 1:17 101:13 point 18:24 21:16 22:15 24:13 31:11,13 31:14 34:3 50:23 54:14 69:24 73:19 81:18 86:18 87:5 89:24 94:10,24 97:14 pointing 86:16 points 44:10 53:19 89:10 92:19 poland 70:18 70:20 portal 19:5 portion 22:25 23:4 position 50:20 52:10 56:4 82:22 85:17,25 88:24	positions 41:9 56:15 possession 19:8 possible 19:2 22:24 25:25 32:11 43:5 67:11 69:16 73:24 74:5,6 98:24 possibly 72:2 post 20:15 32:21 96:11 97:10 98:8 potential 51:7 64:4 71:4 72:21 potentially 68:18 73:17 99:15 power 41:9 88:1 powerpoint 39:10 practical 94:10 97:5 practice 63:13 practices 40:18 precedent 46:8 precipice 42:5 preclearance 46:4,4 47:5 preclude 100:23,24 101:3 preclusive 55:19 72:22	preference 23:4 72:23 preferences 23:3 premature 75:3 preparation 90:4 prepared 90:25 preparing 32:3 prepetition 17:11 45:12 47:23,24 56:1 preponderance 52:2 53:21 presence 77:12 present 7:6 34:6 64:5 84:7 presentation 16:23,24 38:18 39:9 56:9 67:18 presentations 49:25 66:24 presented 30:22 44:15 45:20 67:15 presenting 34:10 preserves 41:17 presumption 92:22 pretty 94:24 previously 59:12	price 54:18,20 55:5,14 56:1 56:16,22 57:14 57:15 prices 17:7 primarily 68:7 89:11,15 primary 66:10 principal 19:9 28:14,22,24 29:12 69:8 principle 64:2 95:11 principles 65:17 prior 17:8 54:22 56:13 92:13 priority 23:16 29:21,22 30:5 30:7,14,16,18 privileges 16:6 pro 5:9,21 7:2 22:8 30:3 66:17 80:13 100:13 probably 22:14 69:13 70:14 99:23 probe 83:17 84:16 85:10 88:13 problem 39:11 93:1 procedures 20:7 74:14,15 74:19,20,22
--	--	--	--

<p>75:2,4,10,16 86:4 89:4,17 89:25 90:4,13 90:18 91:12,15 91:18 96:21 proceed 39:25 46:13,25 77:20 89:22 proceeding 85:8 91:12 97:18 99:7 proceedings 60:19 101:12 102:4 process 24:10 24:21 35:14 41:25 42:4,25 43:10 45:4 47:15,17 48:7 48:20 67:13 75:13 83:9,16 87:22 88:1 proczek 15:9 product 55:11 59:11 products 49:16 professionals 43:21 59:17,19 59:25 60:12,16 62:24 63:2 67:7 74:11,18 76:9 program 49:23 71:20 81:1 programs 26:17</p>	<p>progress 90:6 promise 79:18 99:3 promises 47:1 47:6 promoters 41:23 promptly 16:19 33:12 proof 25:20 74:21 78:4 82:3 proofs 36:12 proper 61:2 83:16 properly 33:11 62:11 property 25:21 65:1 71:3 72:5 72:10 propose 84:24 proposed 37:16,19 43:25 49:4 51:15 54:3 74:19 82:16 88:5 98:8 proposing 87:24 93:19 prosecuted 41:18 prosecuting 66:14 prosecution 55:9 protect 95:16</p>	<p>protected 44:25 62:1 protections 61:22 74:9 protocols 59:14 prove 31:11,13 38:11 82:19 proven 25:13 provide 19:7 25:24 35:12 37:7,11,18,22 38:1 41:15 45:8 69:4 73:6 74:9 provided 18:3 48:15,16 53:18 61:22 62:15 72:8 87:20,21 provides 44:20 46:11 providing 36:24 51:11 61:3 provision 60:21 78:19 82:2 provisions 27:16 60:14,22 62:6,7 63:5 82:5 prudent 26:24 psa 76:6 79:14 public 39:20 47:10 50:1,3 55:3 92:13,23 93:5,6 95:16</p>	<p>96:5 publicly 65:14 published 40:14 pundisto 12:16 purchase 50:15 56:2 purchased 55:23 purchases 54:22 55:23 purchasing 54:24 55:4 purpose 73:7 96:15 purposes 96:14 pursuant 78:2 78:21 pursue 20:15 20:25 24:9 pursuing 36:13 93:3 push 88:8 pushed 42:17 73:9 put 16:18 20:23 21:1 23:25 50:7 57:14 58:7 85:18 86:1,14 87:6,11,19 putting 26:6 42:12 45:13</p>
q			
<p>qualified 24:16 47:13</p>			

question 21:13 56:25 57:5 63:7 65:6 71:25 78:18 83:24 97:5 98:18 100:4 questions 18:22 23:2 34:5 49:5 64:8 72:5 99:2 quick 41:4 quickest 67:11 quickly 41:8 96:23 quinn 6:1 82:11 quite 48:18 92:3 quoted 57:15 61:15 quoting 55:7	range 69:16 ranging 19:11 20:5 rarely 42:8 rasile 15:11 rata 30:3 rate 35:16,18 35:19 49:10,12 rates 49:16 rather 18:2 40:14 42:17 73:5,10,23 74:25 89:3 98:19 rational 57:23 ravi 10:16 rayn 14:20 reach 19:3 53:19 reached 18:10 22:25 23:13 26:11 28:20 64:2 68:22,23 read 33:22 62:6 89:8 ready 27:1 31:24 38:11 real 24:14,25 81:16 83:11 reality 65:23 realize 25:7 82:14,15 realized 65:11 really 19:23 21:22 26:18 33:17 60:14 73:9 74:10	85:10 90:21,24 91:1 95:16 97:17 reason 26:25 29:18 30:8,17 30:18 57:8,23 63:11 76:17,24 91:22 95:11 96:4 reasonable 73:22 reasonableness 51:21 reasons 29:1 33:3 53:14 54:15 82:25 rebecca 9:10 rebound 42:25 recall 98:20 receipt 46:9 receive 28:23 30:2 47:2 49:12,13 51:3 51:4,6 52:3,3 81:1,4 received 27:17 35:15 45:22 46:21 51:9 68:16 receiving 29:2 29:23 30:24 35:7 48:12 59:25 recent 63:14 recently 35:17 recess 77:20 80:6,8 99:21	recharacteriz... 52:7 53:15 recognize 72:15 recognized 66:7 97:20 record 16:8 25:13 48:7 58:25 60:23 63:8 79:1,8 102:4 recover 50:16 recoveries 46:13 48:14,16 51:12 66:15 recovery 50:20 54:2,3,5 94:20 94:23 redact 2:7 redacted 93:8 93:11,14 95:22 redacting 95:5 redaction 92:14 95:4 redactions 94:24 95:9 redeem 49:20 reding 12:17 redline 74:23 refer 62:7 referrals 59:22 referred 63:1 79:23 refinance 69:15 refinancing 69:4
r			
r 1:21 3:1 6:14 10:21 16:1 102:1 raise 97:20 99:6 raised 30:21 69:25 72:6 92:12 raising 101:3 rakesh 14:15 ramon 9:18 ran 42:24 58:10 randles 15:10			

<p>reflect 56:17</p> <p>reflection 45:5</p> <p>reflects 63:22 69:11 70:24</p> <p>regain 17:20</p> <p>regard 80:21 82:17</p> <p>regarding 18:9 47:17 63:21 64:2,3 72:5 80:25 100:16</p> <p>regardless 77:11 87:18</p> <p>registered 46:1</p> <p>regular 82:8</p> <p>regularly 23:10 50:2</p> <p>regulations 44:12</p> <p>regulators 16:16 17:9,17 18:8,11,11,15 27:19 44:14,24 45:3,4 76:9 79:21</p> <p>regulatory 45:22,23 46:9 46:10,16 47:2</p> <p>rehabilitate 42:18</p> <p>reilly 12:18 15:12</p> <p>reject 35:1,2</p> <p>rejected 63:4,6 88:10</p> <p>rejecting 35:7</p>	<p>related 41:18 58:9</p> <p>relates 62:24</p> <p>relating 25:3 94:23</p> <p>relationships 25:3</p> <p>release 27:16 60:14,22 63:5 81:21 82:2</p> <p>released 41:24 62:13,14,24,25</p> <p>releases 36:10 41:21 76:14,20 81:15,17,22,25</p> <p>releasing 63:5 63:6</p> <p>relevant 90:25</p> <p>remain 27:22 90:7,18</p> <p>remained 60:5</p> <p>remaining 41:5 60:18 77:21</p> <p>remains 89:23</p> <p>remark 81:19</p> <p>remarkable 18:13</p> <p>remarks 34:5 38:24 64:7</p> <p>remote 97:13</p> <p>remotely 56:22 96:9 97:7,8 98:7,16</p> <p>removed 41:9 62:12</p> <p>renewed 43:1</p>	<p>reopen 100:23</p> <p>reorganization 42:6 43:2 54:4 54:4 75:20</p> <p>reorganize 42:18 44:16 48:4,5</p> <p>reorganized 43:9</p> <p>repay 28:22 70:3</p> <p>repayment 28:14 29:12</p> <p>repeat 38:23 89:14</p> <p>repeated 40:18</p> <p>repeatedly 39:19</p> <p>report 22:17 31:6</p> <p>reported 23:10</p> <p>reporting 47:11</p> <p>reports 31:11</p> <p>represent 19:24 68:3</p> <p>representation 49:7</p> <p>representatives 61:21 78:2</p> <p>represented 50:1</p> <p>representing 40:6</p> <p>request 57:6 94:4 100:20,22</p>	<p>requested 49:23 78:10 92:6</p> <p>requests 101:1</p> <p>require 69:17 98:10</p> <p>required 32:1 34:2 55:5 59:8 59:14 93:19</p> <p>requirements 33:1,4 58:16</p> <p>requires 63:7 73:24 74:3</p> <p>requiring 73:21</p> <p>reservation 74:15</p> <p>reservations 27:19</p> <p>reserve 87:14 97:24</p> <p>reserves 73:24</p> <p>residence 71:22</p> <p>resident 70:20</p> <p>resign 18:7</p> <p>resigned 18:8</p> <p>resolution 22:10 64:2 68:23 72:1</p> <p>resolutions 18:10 21:19</p> <p>resolve 18:18 22:2,6 23:2 26:13 30:9 32:24 90:10</p>
---	--	---	--

[resolved - ryan]

Page 34

<p>resolved 24:1 27:14,18,19 30:6,18 42:10 71:12 91:9 resolving 22:24 resources 59:18 63:13 respect 25:21 29:17 60:25 74:15 respected 100:22 respective 67:6 respects 60:13 responded 18:22 response 82:5 89:3,7 98:18 responses 63:15,16 89:9 responsible 66:13 responsibly 42:3 rest 22:19 32:15 49:3 restructure 44:16 restructuring 36:23 result 38:9 46:12 67:2,4 69:10 70:8,9 resulted 45:13 59:9,21 72:7</p>	<p>resulting 66:10 74:18 results 34:10 34:18,19,22 49:1 51:20 resume 80:6,6 retail 28:1 29:18 40:8 49:10 78:22 79:6 retained 89:16 retaining 89:12 retention 73:6 return 28:12 33:12 35:15,16 35:18,19 42:2 49:22 51:7 52:21 returned 35:20 35:23 revelations 64:18 review 56:19 reviews 46:6 revisions 60:20 60:23 74:22 revolving 18:15 rewards 49:12 54:25 55:5 78:1 81:4 ribbon 39:14 richard 12:14 rick 14:17 rickie 8:2</p>	<p>rife 40:16 right 16:2,7 21:12 23:17 26:6 28:11,15 39:16 43:16 58:20 64:12 67:19 71:14 75:25 77:17 80:5,7,9 82:9 88:17 89:12,17 90:8 91:4 92:5 96:19 97:24 100:5 rightfully 92:21 rightly 24:4 rights 19:12 20:5,8,11 22:12 27:20 28:19 29:16 63:17 68:18 74:15 rigs 48:18 rise 55:10 rising 65:5 risius 38:1 risk 25:16 43:23 50:25 58:5 68:9 84:8 84:19 riskier 51:6 risky 23:6 road 7:3 64:17 80:1 102:21 robert 14:14 37:2</p>	<p>roberto 10:7 robinson 12:19 47:17 rockwood 12:20 rodriguez 12:21,22 role 56:14 59:7 62:21 room 96:8 rosa 30:14 rose 50:8 roselius 12:23 ross 10:25 38:1 roughly 36:9 routinely 17:17 59:20 61:6 roy 7:25 rudolph 12:24 rule 2:4 20:20 29:21,22 63:10 63:19 ruled 23:19 rules 75:12 ruling 22:16 71:1,2 95:10 rulings 19:19 71:4 rumors 39:22 run 25:19 31:3 39:17 43:13 68:9 83:16 85:23 88:1 ryan 12:13 37:9</p>
--	--	--	--

s	says 30:5 31:8 86:5 scale 81:10 scenario 76:18 77:15 83:9 84:24 87:24 scheme 55:13 scheuer 13:1 schiffrin 13:2 schneider 13:3 schoenau 88:17,23 schottenstein 13:4 schreiberg 13:5 schroeder 13:6 scope 62:4,6,10 62:12 81:10 94:5 97:21 98:22 scott 8:21 14:24 scrap 25:9 screen 16:25 se 5:9,21 7:2 22:8 66:17 80:13 100:13 seal 2:8 94:1,6 94:11 sealing 92:13 92:17 94:4 95:4,4 sean 9:6 seasoned 43:21 seat 47:25 66:6 66:8	seated 16:2 seats 66:11 sec 27:18 46:3 46:6,21 47:4 sec's 52:9 second 21:9 30:21 38:21 45:8 53:16 62:13 67:23 86:3 90:18 91:11 secondly 78:24 81:15 secretly 40:24 section 45:20 securities 17:12,13 46:1 52:11,13 security 20:6 50:8,12,14 52:14,24 53:3 53:4 55:2 see 39:8 57:10 58:23 75:6 95:2 96:12 100:5,9 101:9 101:10 seeded 31:2,10 seek 61:7 94:6 97:1 seeking 16:11 23:16 seem 75:3 seemed 18:14 seemingly 64:20	seems 77:5 seen 57:19 sees 28:8 79:13 seiji 12:4 select 43:20 48:8 81:21 selected 47:14 47:18 selection 47:17 sell 49:11 selling 25:8 45:12 senes 13:7 sense 75:10 88:6 sent 65:2 70:4 separate 31:5 31:11 september 86:13 serban 11:14 series 23:13,16 24:2,7 29:22 29:25 30:7,19 35:10 66:9 seriously 59:23 served 65:22 services 71:22 serving 65:19 session 80:10 set 22:18 26:24 27:13 29:4 35:4 46:21 47:18 51:12 66:1,25 setbacks 42:21
s 3:1 5:18 7:20 10:18 11:7,8 11:18 13:12,20 16:1 sabin 5:18 77:17,18,20,21 77:22,25 80:4 sabin's 89:1 safe 39:21 40:23 safeguard 59:15 safely 21:24 safety 59:18 salaries 81:2 sale 50:15 83:16 sales 24:10 42:25 salle 3:5 salls 15:13 samuel 10:2 13:5 sanders 5:1 santos 7:23 sarachek 12:25 sat 96:23 satisfied 29:17 82:19 satisfy 51:11 79:24 88:9,14 save 29:6 saving 59:11 saying 34:5 76:5,6 91:11 91:19			

setoff 28:11,16 68:17 settlement 2:3 24:3 28:20 30:1,6,9,12 35:10 36:11 51:14,15,18,18 51:21 66:3 72:7,11 78:3 78:20 79:7 settlements 23:1,9,12 24:8 79:5 several 59:10 79:9,9 84:8 severely 83:1,6 83:10 84:7 shafer 15:14 shara 4:6 58:25 share 30:3 38:18 shareholders 48:1 67:15 sharing 16:6 sharon 8:20 shed 22:18 sheet 40:17 66:5 shenaya 8:16 shlivko 13:8 shockwaves 65:2 short 20:1 32:9 shorter 38:24 shortly 37:6 40:11	show 33:5 49:6 52:1 54:20 55:2 70:13 83:6 84:18 shown 39:18 shut 41:3 54:10 side 27:11 45:1 70:22 88:2 sided 74:25 sign 45:9 93:20 signature 102:7 significant 19:25 33:14 42:9,21 43:6 44:1,7 47:22 47:24 56:19 65:10 74:18 significantly 54:21 85:1 silent 39:22 silverman 13:9 similarly 57:21 simon 8:18,23 66:18 simple 82:14 82:22 simply 16:18 21:1,16 23:25 50:7 58:7 73:18 82:14 86:22 sing 80:2,2 sister 59:23 sit 80:9 100:3 situation 87:1 87:3	six 36:19 slide 17:2 21:21 22:13 24:7 27:5 34:17 37:12 39:9,18 slides 27:4,4 34:18 slightly 38:22 77:14 slim 94:24 small 77:13 smart 13:10 smith 13:11 social 21:9 80:19 sole 58:9 solely 89:4 solicitation 35:13 61:4 solicited 73:3 solomon 64:10 solution 72:15 solutions 102:20 soma 14:19 somebody 91:20 99:9 somewhat 60:22 62:25 song 80:1 sontchi 13:12 sonya 2:25 102:3,8 soon 42:3 77:24 80:1	sophisticated 88:1 sorry 54:6 89:13 93:24 sort 68:19 source 69:2 sources 69:4 south 3:20 southern 1:2 southfield 5:4 sp 6:2,3 spaces 66:23 spain 70:17 80:15 spc 6:2,3 speak 27:8 34:4 65:11 76:3 78:10 80:16 speaking 27:9 49:3 63:2 special 17:24 18:6 99:11 specific 54:13 61:18,21 89:6 101:1 specifically 25:17 41:24 spectacularly 58:11 speed 40:24 75:13 91:6 spend 49:3 spent 43:15 69:2 78:7 spirit 60:6
---	--	---	---

spoken 70:20 84:20	start 17:1 21:24 34:17	steefel 13:17	submitted 31:4
sponsor 37:18 43:16 79:22	39:4 44:20,21 67:13 76:1	steep 45:13	31:8,10
sponsoring 43:1	96:4 99:21	steering 65:16 68:23	subordinate 78:21
spreadsheet 70:13	started 18:14 24:11 41:1	steps 55:14	subordinated 50:16 52:15
sprofera 15:15	48:24 67:24	steven 37:14	53:1,12
stadler 13:13	starting 24:13 56:13 64:17,24	stig 10:9	subsequent 64:18 70:4
stage 21:23 22:23 25:11	starving 77:4	stn 20:20	73:1 95:10
67:12	state 17:9 27:18	stock 25:25 41:13	subsequently 34:20
stages 17:5 21:23	stated 76:12	stockholders 66:9	subsidiaries 23:18
stake 44:9 47:24	statement 33:21 55:8	stocking 43:7	substantial 72:9
stakeholders 16:15 19:16	60:10 61:10	stop 39:17 52:8	substantially 43:9 94:5
66:10 67:9	74:16 80:11	stopped 18:24	substantive 23:23 70:8
81:12	84:10 90:1,6	story 40:13	79:8
stakehound 93:3	100:19	stout 38:1	success 36:14
staking 25:16 25:20,21,22	statements 92:5 100:20	straight 42:8	50:2,25 55:6
stalking 20:10 24:12	101:2,5	straightforw... 74:23	58:8
stanbury 13:14	states 1:1,12 4:1 58:21 59:1	strange 48:24	successful 24:11,18 25:18
stand 38:11 42:5,16 44:3	61:2 63:21,25	street 3:20 5:15	35:13 66:1
60:7 77:24	70:15 71:22	stretto 36:18	67:13
90:11	statistics 35:13 36:9	strongly 73:13	suffered 42:20
standard 20:20	status 35:9 71:24,25	structure 29:5	sufficient 84:17
standing 24:1 55:20	statutory 19:5	structured 28:15	suggest 75:9
stanley 13:15	steadfast 60:5	stuart 7:20	suggestion 18:20 32:23
	steadily 65:5	stuck 92:8	suggests 86:1
	steadman 13:16	sub 30:14	suite 3:20 5:3
		subject 95:5,10	102:22
		submit 31:12 46:5 83:1	
		85:22 90:21	

<p>sullivan 6:1 15:16 sums 77:1 supersedes 94:2 supplement 78:18 supplemental 37:5 57:3,6,9 63:23 supplemented 78:13 support 17:4 27:9 28:4 36:6 36:24 37:7,12 37:18,23 38:2 38:5 54:17 55:14 66:15 75:8 76:13 78:7,11 82:23 82:25 87:20 supporters 78:15 supporting 57:17 75:22 83:12 supportive 70:24 79:3 supposed 70:1 sure 18:16 29:13 31:24 32:2 33:11,21 55:20 61:9 75:1 83:22 85:2 86:14,20 99:13</p>	<p>surpasses 48:23 surprise 58:1 64:25 86:11 sustain 97:25 sweet 13:18 systemic 64:18 systems 31:24</p> <tr> <td>t</td><td rowspan="2"> <p>t 9:6 102:1,1 t.j. 6:21 11:19 93:24 tab 94:13,15 94:17,19,20 table 43:4 47:25 66:6,8 tabs 94:12 take 16:21 24:3 29:9 44:17 59:22 68:6 77:19 80:5,5 85:3 99:21,21 taken 42:4 48:25 57:25 74:11 78:9 takes 52:10 talk 26:19 68:1 92:10 93:13,14 talked 53:15 92:25 tanzila 14:11 targets 81:9,13 task 42:19 tasked 40:5 taught 19:14 26:20</p> </td></tr> <tr> <td></td></tr>	t	<p>t 9:6 102:1,1 t.j. 6:21 11:19 93:24 tab 94:13,15 94:17,19,20 table 43:4 47:25 66:6,8 tabs 94:12 take 16:21 24:3 29:9 44:17 59:22 68:6 77:19 80:5,5 85:3 99:21,21 taken 42:4 48:25 57:25 74:11 78:9 takes 52:10 talk 26:19 68:1 92:10 93:13,14 talked 53:15 92:25 tanzila 14:11 targets 81:9,13 task 42:19 tasked 40:5 taught 19:14 26:20</p>	
t	<p>t 9:6 102:1,1 t.j. 6:21 11:19 93:24 tab 94:13,15 94:17,19,20 table 43:4 47:25 66:6,8 tabs 94:12 take 16:21 24:3 29:9 44:17 59:22 68:6 77:19 80:5,5 85:3 99:21,21 taken 42:4 48:25 57:25 74:11 78:9 takes 52:10 talk 26:19 68:1 92:10 93:13,14 talked 53:15 92:25 tanzila 14:11 targets 81:9,13 task 42:19 tasked 40:5 taught 19:14 26:20</p>			

<p>tax 28:25 29:3 taxes 29:6 team 22:1 31:20,21 32:10 33:5 43:12 50:4 team's 33:8 technology 43:23 telegram 66:23 telephonically 7:6 tell 52:18 54:13 55:3 91:13 97:3 telling 40:22 56:10 temporal 60:20 62:4,11 ten 78:10 80:5 tens 40:25 tension 24:14 24:20 43:3 term 32:14 66:5 terms 26:12 28:5,6 29:16 32:12 51:8 54:7 62:23 68:19 69:2 74:12 96:21 test 29:17,21 30:21 37:8 51:25 52:4,11 53:14,23 65:21 82:13,13,18,19 82:24 85:5,6</p>	<p>88:9,14 93:12 testament 51:20 tested 64:24 testified 40:4 40:12 testifies 98:9 testify 49:18,24 53:20 56:17 57:13,21 98:25 testifying 93:11 97:11 testimony 55:15 57:11 79:2 84:18 85:23 86:7 96:15 thank 16:8 21:14,14 34:12 34:13 38:14,20 58:18,19 64:10 64:11 65:14 67:16,18 69:20 71:7,9,9 75:24 76:1 77:15,16 77:22,24 80:3 80:4,13 82:6,7 82:9 87:17 88:15,16,19,19 91:3 99:4 100:2 101:6,10 thanks 32:9 71:6 theories 23:21 64:24 therese 13:1</p>
---	--

therewith 64:4	78:12	27:3 37:4 38:9	tools 85:14
thing 19:17,19	thousand	38:11 41:10	torosian 13:20
71:1 93:17	35:21	42:14 55:20	torpedoes
100:25	threats 60:1	57:3 60:7,10	40:24
things 17:11	three 26:11	67:16 71:13	total 18:4
38:23 59:10	44:9 47:22	75:17 76:3	totally 21:11
66:4 78:4	52:5 53:14	82:6,12 86:18	touch 41:25
90:14 92:24	66:11 68:21	89:10 90:11	44:9
93:8	71:11 77:19,21	100:18 101:5	touted 50:2
think 18:13	78:2,7 79:5	todd 9:19	towards 22:3
21:9,22 27:14	tied 50:25 54:8	together 19:24	town 5:3 66:23
30:10,17 33:1	time 16:18	21:19 65:11	toxic 59:25
35:3 38:7 39:3	18:6 21:6,10	67:10 90:4	track 25:13
39:8,13 46:19	32:9 39:2 40:3	toggle 46:11	tracks 61:3
47:3 48:25	42:12 46:15,21	token 2:3	trade 45:15
53:3,7,13	49:3,20 53:9	33:15,17 40:21	traded 56:13
57:15 61:10	54:14 64:23	49:4,6,6,9,14	trading 56:20
63:18 70:18,21	65:5 67:16,23	49:16,21,22	traditional
76:2,25 79:19	68:14 73:8,19	50:1,3,5,7,10	69:17,18
83:11,24 84:5	74:1 76:5 78:1	50:11,13,15,20	traditionally
84:7,17,22	80:14 88:24	50:24 51:4,8	54:18
85:12 87:19,21	90:5,8,20	51:15,22 52:2	transaction
87:25 88:3,6	91:22 92:3,7,8	52:6,14 53:3	19:21 22:3,21
88:10 90:17	100:22 101:1	53:18,22 54:7	23:7 24:9,12
91:5,17 92:2	timeline 21:21	54:11,11,14,19	24:20,22 26:8
93:4 95:21	44:24 45:25	54:22,25 55:2	29:6,14 68:15
98:15,18	times 32:19	55:10,13,23,24	transactional
thinking 47:8	54:2,3	56:1,3,21,25	61:17
third 29:11	timing 70:6	57:14,17,18,21	transactions
36:10 46:23	timothy	58:8 82:18	61:19
47:7 81:17,21	15:12	tokens 49:9,20	transcribed
thirty 54:1	tiny 77:3	58:2	2:25
thomas 8:15	tireless 67:5	told 17:18 18:6	transcript
10:18	77:24 79:20	tomorrow 96:4	102:4
thomson 13:19	title 28:7	99:8,14	transfer 23:22
thought 20:2	today 17:3	took 42:25	transferred
26:24 27:10	18:12 24:1	50:25 61:19	45:18 51:2

[transferred - undisputedly]

Page 40

68:4 transmitter 17:12 transparency 18:1 79:23 97:17 transparent 46:24 47:9 travis 10:17 treated 50:11 53:6 69:6 72:10 treatment 28:2 28:17 49:4 50:18 51:22,24 66:2 72:8 trial 22:5,5 23:4 42:1 55:19 93:10 96:22 101:4 trials 92:13 tried 93:12 trimming 77:12 trip 48:25 tristan 8:17 troubled 89:21 89:23 troutman 5:1 71:16 true 55:8 73:14 97:6 102:4 truly 18:13 19:15 20:7 21:3 76:6 trust 45:14 92:16	trusted 43:15 trustee 4:2 17:16 27:17 32:24 48:16 58:21 59:1 61:2 63:25 76:8 79:21 83:13 85:14 87:25 92:21 95:2,8,13 trustee's 63:21 try 21:4,7 91:25 95:16 99:25 trying 17:19 39:9 69:22 78:21 87:11 98:2 tuganov 5:14 66:18 77:17 78:1 79:12 tune 78:16 80:2 tunnel 79:14 turetsky 13:21 turn 20:13 24:7 37:12 80:10 turner 13:22 turning 22:15 26:18 27:13 twice 70:13 twitter 66:23 twitters 66:23 two 21:22 22:20,23 24:15 25:11,12 29:20	31:11 34:18 35:17 44:7 64:19 65:17 78:16 80:25 82:24 89:9 90:14 100:7 tyler 11:5 type 49:14 typical 33:9 41:21 typically 45:15 96:13 u u.s. 1:23 4:2 17:16 25:17 27:17 32:23 76:8 79:21 92:20 95:2,8 95:13 ubierna 5:20 80:7,10,12,13 82:7 ucc 76:8,12 78:14 uday 15:1 ultimately 59:15 umber 10:22 unacceptable 93:21 unanimous 82:20 unanimously 43:19 uncertain 17:16	uncertainty 19:21 72:2 unclear 47:3 62:22,25 uncovered 40:16 under 2:3,8 24:6 29:16,23 30:24 31:23 32:4 33:5,6 35:7 45:20 48:13 49:4 50:11,19 51:15 52:3,11,21,24 56:11 58:16 62:3 65:24 72:23 75:21 82:15,16 83:9 84:21 86:7 88:9 96:5 underlying 20:12 54:16 understand 45:9 73:6 84:1 90:15 92:4 95:11 understanda... 31:17 understanding 46:2 92:18 understate 90:2 understood 18:16 43:8 44:23 57:10 undisputedly 64:16
---	--	--	---

unfettered 73:4 unified 65:12 uniformity 61:12,15 unique 24:23 44:15 45:19 59:14 unit 49:7 united 1:1,12 4:1 58:21 59:1 61:2 63:21,25 70:15 unnecessary 76:22 unpaid 21:11 unprecedented 66:22 unredacted 93:5 unregistered 17:12 unremarkable 57:16 58:7 unresolved 93:2 unsecured 3:19 19:6 28:10 30:23 38:17 40:7 50:13 52:23,23,25 53:1,11 unusable 58:2 unusual 76:11 unusually 63:15	unwilling 44:22 update 63:20 updates 23:10 upper 39:14 upstairs 68:22 uptegrove 13:23 urge 91:23 urgency 90:22 urquhart 6:1 usd 6:3 use 28:5,6,7 29:16 39:1 49:9 54:11 58:9 73:21 79:4 95:24 96:1,10 97:9 97:19 98:7 used 50:5 61:16 64:21 96:15,17 useful 80:19 uses 49:19 using 96:25 ust 60:12 81:24 usually 83:3,4 93:12	54:18 82:18 100:16,17 value 22:22 23:18 24:4,5,9 24:20 25:5,7 25:10 26:3,22 31:4 33:12 41:14 42:3 44:4 45:15 50:1,3,8 51:5 51:11,14 53:18 53:21 54:8,11 54:14,17,19,21 55:10 56:17,23 57:17,18,22,23 58:10 65:6 73:18 74:7 82:15 83:6,7,8 83:9,14,20,22 83:23,25 84:2 84:4,5,6,11,13 84:15,23,25 85:1,4,5,8,8,11 85:16 87:22 88:4 valued 31:6 valueless 31:1 values 88:8 van 13:24 variety 25:4 various 59:3 59:21 60:12 62:20 vazquez 13:25 vejseli 14:1 ven 15:3	venable 5:13 77:25 verifies 32:22 veritext 102:20 versus 66:2 85:8 veton 14:1 victor 5:20 6:7 80:13 82:11 videos 50:3 56:7 view 5:11 24:4 36:14 83:5,13 92:21 vik 11:21 vince 15:16 vindication 49:1 violated 30:14 violates 30:5 virtually 96:25 visions 76:13 vitor 7:22 voice 65:12 vote 48:21 51:17,17 63:7 79:4,4 100:15 voted 32:13,14 34:25 35:1 76:17,19,24 77:9 81:20 voting 34:10 34:17,19,22 48:22 51:20 67:3 69:11 70:24 81:20
	v		
	v 12:18 vague 62:3 validation 45:5 valuable 62:18 62:22 valuation 31:4 31:6 33:17 37:12 38:2		

voyager 35:18 82:4	92:10,14 wants 92:10 96:12 99:9	went 19:10 48:6 west 5:15 7:3 14:16	winner 20:10 winning 43:20 winter 17:6 40:2
w	warranted 20:3 warren 14:3 washington 6:19 waste 63:13 watched 56:7 wavered 65:19 way 17:13 19:10,15 21:22 24:8 34:1 72:1 75:11 80:19 84:14 91:25 95:6 ways 52:5 we've 23:8,11 27:14 31:8,10 45:2 46:20 59:25 60:11 69:2 74:17 93:12 94:5 98:16 weedman 14:4 week 31:12 33:25 34:11 37:4 58:15 64:6 83:5,19 weekend 64:1 92:16 weight 55:19 weighted 69:14 weird 71:19 welcome 82:1	whichever 85:9 white 3:17 6:10 38:16 wholesale 95:4 wholly 81:18 81:23 wi 7:4 wick 14:5 wide 17:6 19:11 20:5 widespread 75:8 wildes 14:6 wildest 48:23 wildly 24:11 24:18 54:9 wiles 26:11 65:22 71:11 78:8 william 13:6 13:23 willing 36:6 85:19 92:20 willingness 72:14 91:24 winddown 26:19 83:8 84:24 85:5,8 87:23,24 winded 27:2 winding 80:1	wish 89:9 98:5 101:7 wished 70:2 wishes 97:8,9 withdraw 41:4 withdrawal 72:23 withdrawals 39:17 withdrawing 40:24 withdraws 56:18 withhold 5:2 22:11,16 23:1 23:4 26:17 71:14,16,18,19 72:3,6,7,8,12 72:13,16,18,21 74:14 75:6,9 75:18 witness 55:16 93:11 97:2,11 98:9,25 99:24 witnesses 34:11 36:16,19 38:6 48:14 79:1 85:16,18 86:22,23,25 97:9,19 98:11 98:12,20 100:24
w 13:9 waiting 46:3,6 79:13 waive 63:11 waived 78:20 waiver 63:9 walk 16:22 27:23 36:6 walker 14:2 walks 34:17 walkthrough 34:2 want 16:21 21:14,14 26:18 27:4 29:9 31:16,18 32:8 44:9 46:7,23 47:1 49:3 50:22 57:9,10 57:11 63:12,16 67:22 68:9 69:12,20 76:25 81:19 86:19 89:24 90:2 91:7 92:17 95:12,25 97:22 98:5,13,24 99:6 100:5 wanted 18:15 25:12 45:8 47:8,20 57:12 66:19 68:1,8 68:17 74:13 86:14 87:9			

[wofford - zoom]

Page 43

wofford 14:7 69:21 wolff 6:9 88:23 wonderful 17:1 wondering 100:17 words 52:1 56:16 74:13 work 18:18 19:24 21:3,15 21:17,19 22:3 25:23 29:8 34:7 38:9 44:24 49:1 59:2,11 61:23 70:23 72:14 77:25 worked 23:8 26:9 42:17 43:11 44:13 47:22 59:17 60:16 69:19 working 16:15 19:16 31:23 39:9 72:19 75:15,17 81:6 90:3 92:16 world 40:11 64:20 98:2 worlds 64:20 worth 35:24 53:10 57:1 worthless 58:3 would've 19:20 19:20	write 18:22 written 85:23 86:7 87:11,13 wrong 40:3 wrongdoing 41:18	zomo 14:11 zoom 97:15,18 100:7 101:8
	x	
	x 1:4,10	
	y	
	yara 10:15 yeah 39:8 95:20 100:10 year 16:14 20:22 22:14 26:24 30:2 46:20 47:3 years 56:14 yi 9:24 yiye 14:12 yohannes 7:8 yoon 14:8 york 1:2,14 3:13 4:4,11,18 5:16,16 6:5,5 6:12 98:4 young 14:9 16:5,7 youtube 66:24	
worlds 64:20 worth 35:24 53:10 57:1 worthless 58:3 would've 19:20 19:20	z	
	zabib 15:17 zachary 14:6 15:17 zaharis 14:10 zero 54:12 83:20,22	